

Proceedings of the Estates of the Kingdom of Württemberg

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[*Review of the*] *Proceedings in the Assembly of the Estates of the Kingdom of Württemberg in the Years 1815 and 1816. XXXIII Instalments.*

Hegel's review of the Württemberg constitutional proceedings, published in 1817 in the "Heidelbergerische Jahrbücher der Literatur" (nos. 66–68 and 73–77). Translated from the German text of the Werke (vol. 4, "Nürnberger und Heidelberger Schriften").

The figures between vertical bars, e.g. [93], mark the beginning of a page of the printed edition, so that a passage can be found again in one's own copy.

In the notes, "Editors:" introduces a note by the editors of the German edition and "Hegel's footnote." one of Hegel's own.

Cross-reference: The review in which Hegel settles the question that returns in § 3 Remark: whether the *old right* of a country holds against a rational constitution. On the estates element and representation § 301 ff., on the election of deputies § 308 and § 311, on levies § 299, and on the question who makes the constitution the Remark to § 273. Akin to it is his examination of the English Reform Bill of 1831. The German text is on the German side of this edition.

The business begun two and a half years ago, of completing a German monarchy, which we have seen come into being in our times, through the introduction of a representative constitution, has from its very beginning aroused so general an interest among the German public that nothing more agreeable could have happened for that public than that the *proceedings of the Württemberg assembly of estates* have been made publicly known. In place of the *hopes* which accompanied the beginning and the progress, there must at the close appear *outcome* and *judgement*. The 33 issues to which this consideration is in the first instance confined do indeed not yet contain the completion of the principal purpose, but they form a historical whole in so far as, on the one hand, they present the course of events up to the death of the king who founded the monarchy and also began the second step, that of its inner free constitution, and as the peculiar development of this event could, in its principal features, be regarded as belonging to his government; - on the other hand, the work on the part of the estates appears as something completed, in so far as a committee commissioned by them for this purpose has finished with its *draft* of a constitution, which has likewise appeared in print.

These proceedings, furthermore, present chiefly only

[463] *the one side* of the labours of that attempt, namely the *public labours*, so far as they enter the assembly of estates; the inner history of the labours of the cabinet and of the ministry, as well as what went on outside the assembly among the people, the possible external purposes and activities of the members of the estates, in general whatever one is otherwise accustomed to reckon as belonging to the *secret connection* of events and actions, is concealed here. The interest of the public, however, has of itself been directed chiefly to the public part of the proceedings, which in any case has chiefly the character of furnishing the worthy materials of history. The so-called secret springs and intentions of individuals, anecdotes and subjective influences were held to be the most important thing in a *psychological* view of history that was still fashionable a short time ago. This view, however, has now fallen into discredit, and history strives once more after its dignity, to present the nature and course of the substantial matter and to make known the characters of the persons acting from what they *do*; the conviction has become more general that neither the matter nor the characters in their solidity issue from contingencies or can be known from them.

The historical events that we see before us here have the peculiar charm that they do not contain so considerable a portion of what is *past* as a history of more distant times; the great purposes and interests, like the lesser peculiarities and externalities, are still present. The *concepts* concerning the object of interest which we must bring to this event we may not demand of any more remote age, not even of cultivated Greece and Rome; they are peculiar to our time. Then we see these ideas about the constitution of the state, and in particular about the admission of a share in it, whereby the people is granted an influence upon it and a public life,

[464] not compared here, as the *thoughts* of one writer, say, with the thoughts of another, but a German government and a German people engaged in spiritual labour upon these objects and the thoughts occupied in the rebirth of an actuality.

The time had brought about for Württemberg a new task and the demand for its solution, the task of *erecting the Württemberg lands into a state*. After the nonsense of the arrangement which was called the *German Empire*, and which has been most correctly described, by a historian who was at least ingenious, as the *constitution of anarchy*, had at last reached its deserved end, shameful and in its outward manner too fitting to it, the former Württemberg received not only an enlargement by more than double its previous extent, but this whole, whose parts had previously been fiefs of the Empire, and the part that had made up the duchy also a Bohemian sub-fief, threw off this subordination, passed with the royal dignity of its prince into sovereignty and into the position of a state, - one of the actual *German realms* which take the place of the non-entity that had still borne only the empty name of an Empire.

Such epochs are extremely rare, and equally rare are the individuals to whom fate allotted the distinguished lot of founding states. The history of these few is for the most part lost in a grey antiquity and in a condition of wild, or at least still little cultivated, customs, where outwardly a state had indeed come into being, but the inner arrangement lay in the simple habits of the people and in the character of the chief. The historical origin of articulated constitutions is extended over a long series of centuries; to the few principal features that lay at the foundation, the need of the moment, the necessity and force of circumstances gave on each occasion, at some single point,

[465] a development and additions. The point of view around which the closer efforts of this formation turn is fairly simple; there are, on the one hand, the exertions of the government to subdue the power and the pretensions of the aristocratic intermediate member and to acquire for the state its rights against it; on the other hand, the exertions of the third estate, which is often also called, for itself, the people, to win and wrest civil rights for itself against the same intermediate power, and at times also against the government itself. Thus a constitution, surveyed as a whole, shows itself as an aggregate that has come into being, its development not having advanced uniformly, single parts having remained behind, others having been extended into disturbing excrescences, so that such a constitution resembles an old house whose simple basic form a long series of owners, according to the enlargements of the family and the need of the moment, have transformed into a collection of annexes and nooks, which have their individual conveniences, but together make up a shapeless and unintelligible whole. The spiritual cultivation of the time has the *Idea* of a state and with it of its essential unity, and a twenty-five-year actuality, just now run out, for the most part dreadful, has given the intuition of the manifold attempts to grasp the Idea, and a costly, complete experience. The favour of circumstances finally granted to the ruler of Württemberg for this purpose also the third thing, the external conditions, and besides the distinguished advantage that he did not find the aristocratic middle estate already fixed as an obstacle in a privileged landed nobility, but that this element seemed only now to be taken up. The king seemed hereby to have been placed upon the standpoint, unique in history, of being able to give a constitution *cast in one piece*.

Of the sovereignty obtained, the one side, the existence and recognition of the new Württemberg state *outwardly*, had been accomplished. The first time of its coming into being had fallen

[466] into circumstances in which everything had to be imperiously mustered for the external establishment and preservation, and inwardly, therefore, the means had to be gathered together by a vigorous ministerial government and made ready for use in a firm hand. Now the time had come when not merely the *power* of the state but also its *will* could become alive. The good fortune and the exertions of the European governments and their peoples had succeeded in freeing the sovereignty of the German realms from the restriction under which it still lay, and thereby in bringing about the possibility of in the first place *promising* free constitutions to the peoples. A higher necessity, however, than lies in the positive bond of a promise lies in the nature of the concepts that have become a general conviction, which attach to a monarchy the determination of a representative constitution, of a lawful condition, and of an influence of the people upon legislation. - Frederick II now also took this second step, of creating the monarchical state *inwardly*.

The promise could be fulfilled in a way which might be held to be the shrewdest, and even be given out as the most rightful, but which would have been the *most perfidious counsel* that the ministers could have given. If the princes of the new realms had wished to deceive their peoples quite thoroughly and to acquire honour, so to speak, before God and men, they would have given back to their peoples the so-called old constitutions; - honour before *God* and the *world* - for, after so many public voices and in particular also after the history before us, one might think that the peoples would have streamed into the churches and sung loud Te Deums. - For the shades of *Machiavelli* the princes would have won the fame of the fine policy of the *Augusti* and the *Tiberii*, who likewise let the forms of the preceding condition, at that time a republic, continue to stand, while the thing itself was no longer

[467] and irrevocably could no longer be, - a persistence and a deception into which their Romans entered and by which the establishment of a rational, monarchical condition, whose concept the Romans had not yet found, was made impossible. - This policy might lie the closer to our princes if, from the experience of the last twenty-five years, they compared with one another the dangers and dreadfulnesses which attached to the creation of new constitutions and of an actuality proceeding from thought, and, on the other side, the danger-free repose and nullity into which the institutions of the former constitutions of the estates of the realm had reduced themselves, - if with this already present nullity they further combined the reflection how those institutions, in the wholly different relationship that had set in, like the Roman institutions which Augustus and Tiberius let stand, would lose altogether the little sense and consistency which they might still seem to have had in a German fief of the Empire.

King Frederick showed himself superior to the temptation of this deception. He summoned together for the 15th of March 1815 the heads of the princely and comital families of his realm and a selection from the rest of its nobility, likewise a number of popular deputies chosen by the citizens, and the history of these proceedings opens with the ever great scene in which the king, in full assembly of these estates of his realm, first delivered from the throne a speech to them, in which, after he had first expressed what had already been done, namely that the parts of the country and the subjects, previously so different, had been united into an inseparable whole, that the difference of religious confession and of estate had vanished in civil relation, that the public burdens had been brought into equal proportion for all and thus all had become *citizens of one state*, - then had rendered to his people the testimony of fidelity and obedience, to the army the testimony of bravery and of the honour brought to the name of Württemberg, to the servants of the state

[468] that of support in his endeavours, and to the subjects of all classes that of a willing submission to the heavy burdens of the time and to the exertions of every kind through which security and preservation had been won,

he now declared that he laid the *keystone* to the edifice of the state, *in that he gave his people a constitution.*

After he had appealed to the representatives present, by whom the nation was called *to unite with the head of the state in the exercise of the most important rights of governmental power,*

and at the close had made the call: Let *Us, united,* for the furtherance of the affairs of the nation, to which the constitution summons this assembly, fortify the *sacred bond between Me and my subjects* with *meeting confidence,*

he had the *constitutional charter* proclaimed by the minister of the interior. After its reading he *pledged* himself upon it and with his own hand *handed* it to *the president of the assembly.*

There can surely be no greater worldly spectacle on earth than that a monarch should add to the power of the state, which in the first instance is wholly in his hands, a further and indeed *the* foundation, that he should take his people up into it as an essentially co-operating component. When otherwise one sees the great work of a constitution of the state, indeed most other acts of government, come about only in a series of fragmented actions and contingent events without survey and publicity, and the public appearance of princeliness and majesty had gradually confined itself to birthday celebrations or wedding festivities, one may be tempted to dwell a moment at that scene, where the appearance of majesty corresponds so well to the inner content of its action, as at a beneficent, sublime and corroborating intuition. But it would lie just as near to think that one

[469] had to excuse oneself for such a moment of dwelling. For the occasions on which we have grown accustomed to see princely representation, the emptiness and inactivity of the former assembly of the state, the Diet of the Empire, in general the nullity and unreality of public life, have made such a vexation at acts of this kind, a moral and hypochondriac private conceit against the public and against the appearance of majesty, into the pervading mood, that the mention of it, and perhaps the view that such an appearance is capable of arousing magnanimous feelings, would run the risk of being taken for anything rather than seriousness, hardly for good nature, rather of being judged as courtly folly and slavish blindness and calculation. Our political deadness is incapable of taking delight in such scenes, and thoroughness turns away from them as mere externalities to the substance of the matter and to its own thoughts about it; and here too it is in the first instance the substance of the matter, the *content of the constitutional charter* which the king has given, that is briefly to be set out.

It consists of 66 paragraphs and falls into two parts, of which the first, of 46 §§, bears the title *The Constitution of the Estates of the Realm*, the second, of 20 §§, the title *General Provisions in Relation to the Constitution of the Kingdom and the Rights and Obligations of the Royal Subjects*, so that the one shows itself at once as the fuller, the other as the less developed.

Through the first, the king granted a *representation of the estates* with the following principal provisions: It is to consist of a) *holders of individual votes* (Virilstimmführer) and b) *elected members*, both in *one chamber*. The *eligibility* of the latter is bound to no estate; the servants in royal posts, non-commissioned officers and soldiers, clergymen, physicians and surgeons are excluded; the only further conditions are an age of 30 years,

[470] and besides, to belong to one of the three Christian confessions; the possession of a certain property is not included among the conditions. - For the quality of an *elector* there are required a net yield of 200 gulden from landed estates and an age of 25 years. The *estates assemble* only upon summons by the king, and necessarily every three years, after which time half of the elected representatives retire, yet are eligible again and are replaced by new elections. The assembly lasts not beyond six weeks and is dismissed, adjourned or wholly dissolved by the king. The elected deputies, including the chancellor of the university, the Protestant general superintendent and the Catholic dean, receive their *travelling expenses paid* and *daily allowances* (of 5 Fl. 30 Kr.). The ministers may attend the assembly at any time. - In the years in which the assembly of estates is not convened, a *committee* of 12 members elected by it for three years assembles for the dispatch of urgent affairs; an increase of the levies or an alteration of legislation, however, is not within its competence.

For the *introduction* of new taxes, of direct as well as indirect levies, and for their *collection*, the consent of the estates is necessary; the existing levies remain as foundations for the government of the then king. The calculation of the revenues and the application of the levies is laid before the estates every year. The determination of a *civil list* for the king is left to further proceedings.

The estates have an equal share in *legislation*; without their assent no new general law concerning personal freedom and property or the constitution can be promulgated. The *initiative* belongs in this to the king; the estates, however, may submit *proposals of laws* to the king as wishes, in case of a refusing answer repeat them three times in future assemblies

[471] and, upon the last answer, which must be motivated, make new representations with regard to the motives.

The estates are further permitted to lay before the king general wishes, representations and complaints, - and the king promises to give a resolution upon every submission of the estates, and also to accept the complaints brought to them by individual subjects, if it is certified that the authorities of the state have refused to accept them.

Finally, the estates can demand the ordering of an investigation against royal officials of the state, and upon the consent, which is never to be refused by the king, judgement is to be pronounced, in the case of high treason and of concussion, by a court of the estates, in other cases by the ordinary course of law.

The infinite importance and liberality of the rights which are here granted to the estates of the realm, as well as the simplicity and openness of these provisions, *considered impartially, merely according to their content and without any other regard*, certainly do the highest honour to the prince who gave them, as well as to the time in which the right of the state has purified itself of privileges and has matured to principles, and such a work gains still more by comparison with the shapelessness, narrow-heartedness and obscurity through which, in constitutions at home and abroad, namely in the old-Württemberg one, rights of the people are often veiled and stunted in privileges and particularities, restricted and equivocal, indeed often made wholly into an empty semblance. Are the provisions cited not such foundations of a constitution as cannot be otherwise than recognised and accepted with the highest assent? What might be *missed* cannot be something that would be *opposed* to them, but only additions and more developed provisions, yet only in conformity with those general truths of a condition of the right of the state. What still stems from the *positive*

[472] right of the state is chiefly only the privilege of the aristocratic institution. Besides, however, that the rational right of the state has come back from the democratic abstractions which reject such an institution altogether, the privilege of this actuality, given in any case, has been set very far from the former feudal right in general by further statutes. - Here it deserves in the first instance only to be singled out that to this element in the royal constitutional charter, which is united with the elected deputies in *one chamber*, only 50 votes were granted, to the latter by contrast 73 votes, hence a considerable preponderance. This relation of political power departs widely from that which enters with the system of two chambers and which, by its more general introduction and its age alone, has important authority. The contrast of that proportion of votes with the one adopted in the provisional assembly of estates of the Kingdom of *Hanover*, where to the knightly estate *one* vote more than to the burgher estate had been assigned, may be cited in passing because the Württemberg estates in the following proceedings have several times provoked the liberal utterances of the Hanoverian legation at the Congress in Vienna concerning German constitutional affairs.

More unexpected still could seem the further extension and almost complete unboundedness which has been given to the *democratic principle* by the manner of electing the representatives, so that this element enters into the order of the state in an almost wholly loose form. The few tempering features that show themselves here, after the holders of individual votes have already not been set over against it in a chamber of their own, are roughly the provisions that the electoral assemblies are presided over by the royal district officers (Oberamtleute) and in the good towns by the bailiffs (Landvögte), that the persons drawn in for the business of the election, such as the district clerk

[473] and his substitute, are not eligible in the very district in which they have this function; in other districts, however, they are. The capacity to be elected a representative is, as cited above, restricted to very few conditions. In the first place all *servants of the state* and *clergymen*, as also the physicians and surgeons, are excluded. The consideration which probably excluded the latter two classes may also have been taken with the former, namely that their official functions permit them no longer absence and other occupation. Apart from the fact that this would also be the case with the holders of individual votes who stand in royal offices, in so far as it is presumably not supposed that they are each time to let themselves be represented by others, and then that, with those employed in the place of the assembly of estates, which will as a rule be the capital, this ground is diminished, this consideration is certainly not significant enough to justify a disposition so extremely important for the main matter. Even in the *draft of the basic features of the new constitution of the estates*, with whose composition the king himself had occupied himself (see Supplement of Documents, p. 5) and which he had handed over, in a speech delivered in the assembled council of state on the 11th of January 1815, to a special commission of councilors of state and senior officials for deliberation, there occurs the provision (see p. 8) that the royal servants also, in so far as their service relations permit, are eligible.

The reviewer wishes to expand at greater length upon this subject, which is of great importance. - Even this circumstance must not here be overlooked, that in great states, such as France for example and still more England, the whole social condition within and the far-reaching connection without place individuals in wholly different relationships of wealth, of culture and of habit, of living and conducting themselves in more general interests, than in a country of greater narrowness

[474] of extent, of social condition and of wealth. In such smaller countries the greater part of those who acquire a scientific, in general a more universal cultivation will see themselves induced to seek their economic and social existence in the service of the state; there will therefore, when the servants of the state have been subtracted, be found out of proportion fewer who bring into an assembly of estates a considerable insight and experience in general affairs, - in any case still fewer who could be called *statesmen*. The nobility has already been in part taken away among the holders of individual votes, another part of it will be found in royal service; in general, for the places of the deputies to be elected, the nobility was not reckoned with; on the contrary. The *estate of advocates*, which among the remaining estates can come into consideration chiefly, is, in its concepts and business in the first instance, bound to the principles of private right, and moreover of *positive* right, which are opposed to the principles of the right of the state, that is of the rational, of which alone there can be talk in a rational constitution, - so that the sense of a statesman all too famous hit the mark rightly in this when he declared advocates the most unskilful at counselling and acting in public affairs. How the spirit of advocates has worked in the history of the Württemberg assembly of estates will show itself in what follows. - The legal exclusion of this estate could well be contradicted from the side of abstract right, yet not more than the exclusion of physicians and surgeons; a organisation of the state, however, rests upon a wholly different concrete wisdom than a formalism abstracted from private right. A quite peculiar structure of the old-Württemberg condition, which is of the first importance for the constitution of the estates there, the *estate of scribes* (Schreiberstand), we shall come to know in the sequel. The contribution which the estate

[475] of merchants, tradespeople, and other owners of property can furnish for an assembly of estates, important as it is, cannot for this purpose be in so numerous a proportion as in England, say, and cannot by itself replace what is lost through the exclusion of the officials of the state.

As important as this exclusion already is through the diminution of the material from which capable deputies can be taken, so much more important is it for the element of disposition, which must be the preponderant one in an assembly of estates if it is not to turn into the most dangerous evil that is possible in a state. This fundamental quality can in general be called the *sense of the state*. It is not disposed of with abstract insight, nor with mere rectitude and a good disposition for the welfare of the whole and the best of individuals. Owners of landed property, but equally also the individuals engaged in trades and otherwise in possession of a property or a skill, have the interest of the preservation of civil order, but the *direct* element of their purpose in this is the *private* element of their possession. If deputies of the estates of the realm bring with them the sense of private interest and private right as their first purpose, upon which the rest is to depend and of which it is to be a consequence, then they set out to haggle off as much as possible from the state and to find it superfluous, if otherwise not inexpedient, yet for their purpose not indispensably necessary, and they come altogether with the will *to give as little as possible* and *to do as little as possible* for the universal. - There is no question of what dispositions deputies *can* have, from whatever estate or relationship they are taken; in arrangements of the state, as in every rational institution, the *contingent* may not be reckoned with, but the question can only be what the *nature of the matter*, here of the estate, brings with it.

The sense of the state, however, is acquired chiefly in the

[476] *habitual occupation* with the general affairs, in which not only is the infinite worth which the universal has in itself felt and recognised, but also the experience of the resistance, the hostility and the dishonesty of *private interest*, and the struggle with it, in particular with its obstinacy in so far as it has fixed itself in the form of right, is gone through. Since the deputies are elected, it is an essential consideration that the electors should proceed chiefly from such relationships in which this sense must be present and in which it is formed. The former minister of the interior in France, *Vaublanc*, took into his draft of a law for the manner of election of the chamber of deputies directly the provision that the royal officials of every kind, together with the clergy, in the departments should make up the majority of the electors. There is agreement on this, that the English constitution is maintained through that alone which is called its *abuses*, namely through the wholly unequal and therefore unjust, indeed in part quite senseless privileges in respect of the rights of election, by which alone, however, it becomes possible that the government can in general reckon on the majority of votes. - It is an opinion of the uninstructed, in this connection, to regard the opposition party as a party *against the government* or *against the ministry* as such; if the opposition attacks not merely individual ministerial measures, which is also done by the independent members who otherwise in the main vote with the ministry, but combats it in each and every respect, its struggle goes only against *this particular ministry*, not against the government and against the ministry in general. What is often reproached to them as something bad, namely that they only want to get into the ministry themselves, is precisely their greatest justification, quite the contrary of the tendency which one often sees praised in German estates of the realm or individuals as bravery

[477] of freedom and defence of the citizens and their rights, - the tendency to win and haggle away from the state as much as possible of means for themselves.

It must be left to German history to show how far the appearance of the former so-called third estate in the diets had its origin in the relationship of *ministeriality*, in which the heads of the towns had stood as princely officials, and how far, through entry into this relationship, the burgher councillors afterwards also obtained a share in membership of the estates of the realm; likewise how the original officials were at first merely deliberative and only in the course of time became decisive in their votes. - In the Treaty of Tübingen of 1514, which is regarded as the fundamental law in the constitution of the former Duchy of Württemberg, the *princely officials, together with one from the court and one from the council* of a town, are expressly named as those who are to make up the deputies of the country (Landschaft) at the diets. - Yet already six years afterwards, in the year 1520, the estates of the realm brought it about, before the imperial commissioners, that the officials were weeded out again; the estates thereby give a poor example of the immutability of treaties just solemnly concluded. - Very near at hand lies the objection against the eligibility of officials as deputies, that they, as in the service of the prince, will *naturally* also speak and act in his interest, whereby the thought perhaps slips in that what is in the interest of the prince is *against* the interest of the people and of the state. In any case service at the *person* of the prince, *court offices*, is something different from the *service* which is rendered to the *government* and to the *state*, and the opinion that what happens in the interest of the government and of the state is *against* the interest of the people distinguishes the rabble from citizens. - The most recent events of the world, the struggle for

[478] Germany's independence, have instilled in the German youth at the universities a higher interest than the mere direction upon the immediate future acquisition of bread and upon provision; it has also bled in part for the purpose that the German countries should receive free constitutions, and has brought with it from the battlefield the hope of a future further working for this and of an efficacy in the political life of the state. Since it procures for itself the capacity for this through scientific training and devotes itself chiefly to the service of the state, is it, like the whole scientifically cultivated estate, which for the most part gives itself the same vocation, for this very reason to lose the capacity to become members of estates of the realm, representatives of the people?

There is here still the important circumstance to be taken into consideration, that the change in the relationship of the former *princely servants* constitutes a significant moment in the transition of Germany from earlier shapelessness and barbarism to the rational condition of a *life of the state*. - Something on this circumstance can be cited from the appendix to the 25th part of the proceedings; there, p. 25, it is mentioned with regard to the thirteenth and the following centuries that the chamber offices were at first entrusted for the most part only to persons of the knightly estate, with a receipt of considerable revenues from landed estates and from the prestations of the subjects, who, however, found a pretext for giving up the exercise of the office, which had become burdensome, and for having it administered by an administrator (Pflegverweser) from the burgher estate, with an allotment of a lesser enjoyment. Later these, like the bailiff, judicial and other offices, were transferred merely to persons of the burgher estate, who, however, regarded this not, as later, as a favour but as a great burden, and had to accept it; nor was this burden forced upon anyone for too long; it counted as a special favour to be spared such offices,

[479] - of which several examples are cited in the same place.

In the relationship of these ministeriales, then, at least, even though otherwise a vassalage and even something of a bondage lies in it, the other circumstances dropped away, according to which one could believe them to be for the interest of the prince, *against* the people, in the sense in which princely *servants* were later taken roughly for princely *lackeys* and for a class excluded from the people. This latter position they had in so far as the revenues which they had to collect and to account for, as also the judicial and police power which they had to exercise in the name of the prince, counted more as rights of a *private possession* and of the *private power* of a third party against the citizens than as revenues of the state and duties of the state. But as the domanial possession and the *family* entails of the princely families have in later times approached ever more the character of *property of the state*, and the bailiff's and other rights over subject and bondage people have begun to pass over into the more rational character of *duty of the state* and *power of the state*, so the princely servants too have come, beyond the dependence of their salaries upon *arbitrary will*, to rights in their offices and to the dignity of *servants of the state*. This transition from the administration of a private possession into the administration of *rights of the state* is one of the most important which has been introduced by time, and which has also no longer left the relationship of the officials in the determination which held at the time of the former Württemberg constitution; - it is one of the changes which then became fixed and completed with the general transition of a non-sovereign principality into a state. - Since the positive right of the state, which the assembly of estates chiefly made the basis of its claims, has history for its basis, the general remark may be appended here that it is precisely history

[480] which teaches us to recognise the circumstances under which a provision of a constitution was rational, and here gives, for example, the result that, if the exclusion of royal officials from the estates of the realm was rational in earlier times, it is no longer so now under other circumstances. - That the assembly of estates recalled neither the old relationship of ministeriality and the express disposition in the Treaty of Tübingen, nor the distinction between former princely lackeys and officials of the state, is very comprehensible. More striking, however, is it that the ministry seems to have occasioned the exclusion of officials of the state.

Another closely related sphere of public business was indicated by the constitution of the former duchy, namely the *court and council* of the towns, from which the deputies to the diet were to be taken. Certainly a magistrate's post is a suitable preparatory school for functions of the estates of the realm; persons of the magistracy live, like the officials, in the daily activity of helping to uphold civil order, and in the experience of how laws and institutions work, as also what counteractions of evil passions they have to combat and to withstand. Persons of the magistracy, furthermore, are themselves from the burgher estate, they share its more determinate interests, as they can also share its nearer trust. - Only, to be sure, from one end of Germany to the other the complaint of incapacity, sluggishness and indifference, - if not also of further depravity and badness, of the communal administrations had become so loud that their institution seemed above all to have needed a rebirth before men could be cultivated [in it] and issue from it who possessed capacity and trust for a larger sphere of action. The right of the magistrates to carry out for themselves the refilling of the posts falling vacant in them will well have been a principal circumstance that has brought them so low. What one might otherwise

[4.81] well call despotism, namely that many governments have taken from the town magistrates and other heads of communes the administration of communal property and of the other foundations and institutions belonging to churches, schools and poverty, may find in that incapacity not only its justification, but may rather have been able to show itself as an unavoidable duty. The same ground of incapacity it is that has also left, of the share which the magistrates as courts were supposed to have in the administration of justice, frequently no more than the mere formality, has brought the business and the decision into the hands of the princely heads of courts, the district officers, or has compelled recourse to be taken to legal opinions of consultants and advocates; the governments saw themselves likewise thereby occasioned not to leave the hitherto existing share in the administration of justice any longer in the hands of the magistrates.

Now if the town magistrates, according to their hitherto existing organisation and constitution, cannot precisely awaken any great hope for themselves of supplying capable deputies to the diet, this provision would nevertheless have deserved not to be wholly forgotten; but extending modifications would of course have to remedy the exaggerated and one-sided character of that restriction. The other extreme, equally going too far, however, we see in the royal constitution, that *in the first place* the eligibility as deputy is almost as good as unrestricted, and then in the second place that the conditions for being an *elector* are equally insignificant; - besides an age of 25 years there is required for this only a sum of property of 200 Fl. from landed estates.

This latter kind of conditions of the capacity to elect has hitherto been foreign to German institutions, and this idea has come into circulation only in more recent times; we

[4.82] wish to remark something upon it. What is first striking in it is that, according to such dry, abstract determinations as the two cited, the electors otherwise appear in no association and relation to civil order and to the organisation of the whole of the state. The citizens appear as isolated atoms and the electoral assemblies as unordered, inorganic aggregates, the people in general *dissolved into a heap*, - a shape in which the commonwealth, where it undertakes an action, should never show itself; it is the most unworthy of it and the most contradictory to its concept of being a spiritual order. For *age*, and likewise *property*, are qualities which concern merely the *individual for himself*, not attributes which make up his *standing in civil order*. Such a standing he has only by virtue of an office, an estate, a civilly recognised skill in a trade and entitlement according to it, mastership, title and so on. - The popular conception is so familiar with such standing that one says of a man only then that he is *something* when he has obtained an office, mastership, or otherwise admission in a determinate civil sphere; of one, on the contrary, who is only 25 years old and the owner of a landed property [which] yields him 200 Fl. and more annually, one says, he is *nothing*. If a constitution nevertheless makes him into *something*, into an *elector*, it grants him a high political right, without any connection with the other civil existences, and brings about for one of the most important affairs a condition which is connected more with the democratic, indeed even anarchic, principle of *isolation* than with the principle of an organic order.

The great beginnings of inner rightful relations in Germany, by which the formal formation of the state was prepared, are to be sought in history where, after the old royal governmental power had sunk in the Middle Ages and the whole had dissolved into atoms, now

[4.83] the knights, the free men, monasteries, the lords as well as those engaged in trade and crafts formed themselves, against this condition of disruption, into fellowships and corporations, which then wore away against one another until they found a tolerable existence side by side. Because the supreme power of the state, in whose impotence precisely the need of those corporations lay, was in this something so loose, these partial commonwealths developed their modes of association all the more firmly, more exactly, indeed even painfully, to a wholly constricting formalism and guild spirit, which through its aristocratism became obstructive and dangerous to the formation of the power of the state. After, in the most recent times, the formation of the *higher powers of the state* has perfected itself, those *subordinate* guild circles and communities have been dissolved, or at least deprived of their political place and relation to the inner right of the state. It would now, however, be time again, as one has hitherto organised chiefly in the spheres of the higher authorities of the state, to bring the lower spheres also back to a political order and honour, and, purified of privileges and wrongs, to fit them into the state as an organic formation. A living connection is only in an articulated whole whose parts themselves form particular, subordinate circles. To obtain such a whole, however, the *French abstractions* of mere *number* and *quantum of property* must at last be abandoned, at least no longer made the principal determination and set up primarily as the sole conditions of one of the most important political functions. Such atomistic principles are, in politics as in science, the deadening of all rational concept, articulation and liveliness.

It may also be recalled that the exercise of such a wholly isolated calling as that of being an elector easily loses its interest in a short time, and in general depends on contingent disposition and momentary pleasure.

[484] This calling is over with a single action, an action which occurs only once within several years; with the great number of those giving votes, the influence which his vote has may be regarded by the individual as very insignificant, the more so since the deputy whom he helps to elect is himself in turn only a member of a numerous assembly, in which only a small number can bring itself to the evidence of a considerable importance, while otherwise, through only *one* vote among many, it furnishes an equally inconspicuous contribution. However much, then, it is expected psychologically that the interest of the citizens of the state should drive them to seek the capacity to vote most zealously, to hold it important and an honour, as well as to press forward to the exercise of this right and actually to exercise it with great circumspection and without any other interest, experience has shown on the contrary that the too great distance between the importance of the effect which is to come out and the influence of the individual, which presents itself as extremely trifling, soon has the consequence that those entitled to vote become indifferent to this their right; and when the first laws are occupied with excluding many citizens from voting, legal dispositions soon become necessary to induce those entitled to appear for voting. - The example of England, so often used superficially, of the lively agitation at the elections to parliament, does not fit here either; for in this part of the English constitution the privileges and inequalities of entitlement are precisely the most influential circumstance, - of which the contrary rather lies in that atomistic method.

Moreover it goes without saying that these remarks against the abstract principles of number, of quantum of property, of age, cannot aim at wishing to deprive these circumstances of their significance and their influence. On the contrary, if the entitlement to vote

[4.85] at the elections and eligibility itself are connected with the other institutions of the state, these circumstances exercise their influence of themselves; and if this is here legally ordained and, for example, for the capacity to be a member of a town magistracy, court, head and member of a corporation, guild and the like, a certain age, landed property and so on are required, this stands far more in proportion than when such dry, yet merely external conditions are set so abruptly over against the high interest of membership of the estates. - The *guarantee* which is sought through such conditions for the capability of those electing and elected is in any case partly of a negative kind, partly a mere presumption; whereas there is a wholly different, positive guarantee, through having been chosen, by the trust of the government, to services of the state or, by the trust of the communities and of fellow citizens, to communal services and offices and having been received into fellowships, further through actual activity and share in the organic life of state and people having acquired the skill as well as the sense of it, the sense of governing and obeying, and having given occasion that the electors could get to know and test the dispositions and capacity.

Provisions of that kind, which presuppose the people not as a state but rather as a heap, and then divide this according to number into particular heaps and according to age and a single determination of property into two classes in general, cannot properly be called *institutions of the state*. They do not suffice to take from the share of the people in the general affairs its democratic shapelessness and, more closely, to withdraw from contingency the purpose of obtaining capable deputies for an assembly of the land. An institution of the state cannot merely remain at the *demand* that something *should* happen, at the *hope* that it *will* happen, at the restriction of some circumstances which could make it difficult, - it

[486] deserves that name only if it is the arrangement *that what should happen does happen*.

Since the reporter has become so prolix on this point, the remarks on the others must be kept shorter. - The estates have been granted the prerogative that without their consent *no new taxes* shall be introduced and the existing ones not increased. Württemberg may well have been the first German land in which general estates of the realm came into possession of this right so early and in so open and definite a manner; the estates of the realm that we have seen emerge or revive elsewhere contain, in part, highly restrictive elements from the feudal constitution, and in part their formation and the determination of their sphere of operation still seem to stand in too provisional and murky a light for them to be compared with the free, frank and clear form in which the monarch of Württemberg wished to place his own. - The bloody struggle of the *Tyroleans* against forms of state administration which they believed to be contrary to their old, inherited rights aroused general interest; upon the eventual reintroduction of their former constitution, the monarch reserved to himself the determination of the sum of the state levies and left to the estates only the apportionment. It may now be disputed whether the old Württemberg estates already possessed the right conceded to them by the King's constitution, or not, and whether they did not earlier possess a far more extensive one, - a dispute which is without practical interest, and which for that very reason would be all the more suited to make a proper *querelle d'Allemand*. One may well say that by the provision that the *existing taxes be left in place* and that only an *increase* should not take effect without their approval, the Württemberg estates were formally put back roughly on the standpoint on which the former Württemberg territorial estates found themselves.

[487] For the direct and indirect levies which formerly, as now, flowed into the princely chamber, and which rest on ground rents, annual dues, tithes, labour services and so on, are dominical rents and, in the sense of private law, the property of the ruler or of the state; they have the *existing* as their basis and are thus exempt from any consent on the part of the estates of the realm. The other part of the taxes proper, direct and indirect, of the levies which were raised in the sense of public law, was fixed, both in amount and in its application to purposes of state, namely the discharge of the state debts and the payment of the circle troops and household troops, by contract, under the supreme judicial influence and confirmation of the authority of the Empire, so that here too the estates of the realm were bound to the existing as to a law. Even if, out of all the qualifications and particular circumstances under which the former estates of the realm exercised the granting of taxes at all, apart from the case of an increase, a general point of view and the assertion could be drawn, *that they possessed this right of consent in a comprehensive sense*, such a right nonetheless receives an entirely new position and an incomparably greater extent and importance through the new circumstance that the land of Württemberg has become an independent state from a fief of the Empire. In that condition war and peace were made not by the individual estate of the Empire but by Emperor and Empire; the exertions which a war required were in part fixed once and for all by a matricular assessment. Not to speak of the fact that the formal obstinacy of the German estates, never to render more than could not, rightfully or wrongfully, be averted, had the consequence that the passive exertions became all the greater, - an expenditure which fell back just as unavoidably upon the territorial estates.

Against refusals on the part of the estates of the realm the prince had, in general, a support and aid in the courts of the Empire. But after Württemberg had become an independent *state*, the right of granting taxes by estates acquires a like independence and with it an entirely new sense, with regard to which no appeal can be made to the preceding condition. Here the state accordingly requires entirely new guarantees against private-mindedness and against the presumption of the estates, since the former guarantees which the government had in Emperor and Empire no longer exist; an entirely new element, *the political*, has arisen, into which the estates are placed and which they previously lacked. - German particular history supplies examples enough that the drive of former estates of the realm in their political nullity went *towards passive neutrality*, preferring to keep all intervention in worldly relations wholly away from themselves and to let whatever might come pass over them in disgrace, rather than to seize upon a self-resolution to action and to honour. Connected with such a drive to dishonour and inaction outwards is the tendency to turn activity, instead of *against the external enemies*, rather *against the government*. All too often the estates of the realm have seen in critical circumstances nothing other than an advantageous opportunity to put the government in embarrassment and, for the exertions which it demanded for its own honour and welfare and that of its people, to prescribe conditions and to acquire for themselves concessions of rights against it. All too often they succeeded in bringing thereby misfortune and disgrace upon a land for the present moment, but for the future a restriction and weakening of the power of government and with it a lasting foundation for internal and external disorder. From the political nullity to which the German people had been reduced by its constitution, from the incapacity of the many small wholes, of the greater part of the estates of the Empire, to have a resolution and will of their own,

[489] there had to proceed a spirit of sinking into private interest and of indifference, indeed of hostility, towards the thought of having a national honour and of making sacrifices for it. - If, for example, in the English nation the feeling of national honour has more generally pervaded the various classes of the people, then the right of Parliament to grant the levies annually has an entirely different sense from the same right in a people that would have been brought up in the private-minded outlook and, because it lay outside the political standpoint, been kept in the spirit of narrowness and private self-seeking. Already against such a spirit the governments would need, for the preservation of the state, a new guarantee, since they have in any case lost the scarcely sufficient one from Emperor and Empire. The right of participation in the determination of the state levies, however it may formerly have been constituted, is now, since the estates have no superior above them but their government of the state, to which they at the same time stand opposed, in and for itself an infinitely higher, more independent authority than before, just as they thereby receive a relation to and influence upon war and peace, upon external policy in general as well as upon the internal life of the state.

By the circumstance that the *existing levies* were taken as the basis by the royal constitution *for the lifetime of the reigning monarch*, the right of taxation was indeed given a restriction in form; for in substance it is in any case restricted by the necessity of need. This necessity could now very well be present with regard to the magnitude of the levies; - in all states the need of the last years - and in the richest, like England, most of all - has driven the impositions to a height never before imagined, and France, Austria and others have helped themselves in these financial embarrassments only by arbitrary, violent operations. Apart now from the need, of which nowhere has any proof

[490] been seen that it was not present, apart from the impossibility of basing a financial constitution on other principles all at once, the Württemberg estates of the realm could let this article please them out of *gratitude* towards the prince who had been the first and up to now, after two and a half years, almost the only one to give his land such an open and liberal constitution, - towards a prince towards whom, as Herr Count von Waldeck says in the first speech with which the assembly of estates opened its sittings, right at the beginning (Proceedings, II. Section, p. 3), all the estates of the land, all the provinces of the realm vied in *feelings of gratitude* over his resolution to restore a constitution, - towards a prince to whom Herr Count von Waldeck goes on to give the praise (ibid.):

“that he has guided Württemberg through all the storms of the last decades *with rare strength*” (“*rare qualities*”, it says in the continuation of the speech (Proceedings, II. Section, p. 4), “have from of old distinguished the rulers of Württemberg”; for this indeterminate word the further historical exposition there gives, in their case, apart from Duke Christoph, the closer meaning of domineering arbitrary will or weakness of character) -

the praise “that he has given Württemberg a *considerable extension*” (namely through the so-called mediatization of German estates formerly immediate to the Empire - an extension which Herr Count von Waldeck (VI. Section, p. 93) characterizes as an unlawful condition, an infringement of the rights of the mediatized lords and of their subjects entrusted to them by God, as an extension which those through whose incorporation it took place could not escape only because they had to yield to force) -

the praise “that he now loses not a moment in order to annul again the *consequences*, foreign to his will, of the circumstances of the year 1806, namely the *abolition* of the *constitution founded for eternal times* by His Illustrious

[491] Forefathers". (The whole course of the proceedings shows that the opposition of the estates of the realm concerned the one point, that by the royal constitution as given the former one was *not* restored, that consequence *not* annulled.)

Moreover, as is well known, the demand of the estates of the realm that, even during the King's lifetime, their concurrence should extend to the taxes already existing had no success, owing to the early death of the King, just as, by their non-acceptance of the royal constitution, which granted them fresh negotiations on the taxes upon a change of government, they have cut off such negotiations.

To complete the historical account of the main moments of the constitutional charter, there remains to be cited the second part of it, the *general provisions in relation to the constitution of the kingdom and the rights and obligations of the royal subjects*. These, however, admit of neither an extract nor an appraisal; they are simple organic provisions which speak for themselves and make up the rational foundation of a condition of public law. E.g. § 52. *All subjects are equal before the law; they have access to all offices of state; neither birth nor any one of the three Christian confessions excludes from them.* – § 53. *To the public burdens and levies all have, according to the laws, to contribute proportionately equally.* – § 55. *Every subject has, if he is free of military obligation or has satisfied it, the right of emigration.* – § 56. *Every subject is free to choose his estate and trade according to his own free inclination and to train himself for it* and so on. These principles admit only the remark that it can never occur to estates of the Empire to reject them, and that only a repugnant perversity, obstinacy, or whatever one might wish to call it, could bring such an assembly

[492] to the point of not mentioning them and of not giving honour to the ruler who makes them *expressly* into fundamental provisions of the rights and obligations of his subjects. However older constitutions may relate to such principles, in them these are tied to *particular* and *external* circumstances, entangled in them, indeed often obscured; it is not for the sake of the principle, i.e. for the sake of rationality and of an absolute right, that rights appear to be present in them, but they appear as single acquisitions, which are to be thanked to particular circumstances and are also restricted only to this and that case, as if they could just as well be lost again through unfortunate circumstances. It is an infinitely important advance of culture that it has penetrated to the cognition of the simple foundations of state institutions and has known how to grasp these foundations in *simple propositions* as an *elementary catechism*. If the assembly of estates had brought it about that the 20 §§ which contain these general provisions were hung up on tablets in the churches, taught to the growing youth and made a standing article of school and church instruction, one could wonder less at this than at the fact that the assembly of the land ignored them and did not feel the value of the public recognition by the government and of the general knowledge of such principles.

But on account of this universality they make up only the *outline* for a legislation yet to be drafted, like the Mosaic commandments or the famous *Droits de l'homme et du citoyen* of more recent times. For an existing legislation and an already present government and administration they are the abiding regulators upon which a revision as well as an extension of what already exists must be founded, if either is necessary. The royal constitutional charter stops at these general

[493] foundations and does not contain their further development, nor the inclusion of closer provisions which could already be present as state institutions. Organic constitutional provisions and laws proper generally border very closely upon one another, and the further work of development and of subsumption of the already existing institutions could furnish chiefly an object for the activity of the assembly of estates.

These, then, are the main moments of the manner in which the King thought he had supplemented the hitherto existing constitution of the state of his realm with the important member of a representation of the people and with the recognition and proclamation of the general principles of justice in the life of the state; he believed he had brought about and completed the incorporation of that member, and with it the establishment of the foundation for the further formation and application of the principles of right, through the actual convocation of estates of the realm, undertaken in accordance with the provision of the constitutional charter, through his own public pledge upon the charter, its solemn delivery to his estates and its promulgation, as the instruction which conferred their authorization upon them. One would now perhaps expect that the further course of history would show how this new creature, the estates of the realm, moved within the circle conceded to it, and how this important vital element, added to the organism of the state, worked within it. But it is not the history of such an assimilating and life-active efficacy that unfolds before our eyes; rather, the members summoned to it refuse to let themselves be received into the state as this member, nevertheless declare themselves estates of the realm, but of another world, of a past time, and demand that the present be remoulded into the past, actuality into unactuality.

In the same sitting, on the 15th of March, in which the King believed he had completed the internal constitution of his

[494] realm, the beginning is made, in that partly the formerly privileged classes, partly those summoned in order to be estates of the realm, jointly declared that they find themselves *outside* the new constitution of right of the state and that they do not enter at all into the constitution given by the King.

First of all, the *agnates* of the royal house (I. Section, pp. 26 ff.) declare that they expressly wish to reserve to themselves and to all future agnates, heirs and heirs of heirs of the royal house the rights of the former condition. - Then a number of *mediatized lords* declare that they expect from the Congress of the monarchs in Vienna the determination of their rights and relations and therefore cannot subject themselves in advance to a constitution of particular estates of the realm; they accordingly renounced any participation in the proceedings. - In general, the declaration was inserted in the first address of the estates (without its being at all evident from what authorization) that the remaining *princes and counts* and the *whole nobility* also can engage in it only with *reservation of their rights* and *of the pronouncement of the Congress*. - To these *reserved rights* a strikingly wide sense is given in particular in a petition of grievances addressed to the estates by Herr Count von Waldeck in the name of the High-Countly House of Limpurg (VI. Section, pp. 91 ff.). It says there, p. 93, that this high-countly house never *accepted* the *abdication* of the *Roman Emperor* (an abdication which has otherwise been accepted by all the potentates of Europe) and (p. 97) that after the dissolution of the Confederation of the Rhine it *entered into the legal possession* of all its earlier *legal competences*, and that only the actual possession of them is, up to this moment, unlawfully lacking; - that is, in other words, it thereby formally renounces the legal incorporation into the state of Württemberg and the relation of subjection to it, and even adds that the Herr

[495] Count is ready, in due time, once a constitutional condition has come about in Württemberg, *to state those provisions* under which the county of Limpurg will *be ready to enter*, by a contract, into a *relation of subjection* to Württemberg.

How the royal ministry could regard such presumptions on the part of mediatized lords, even ridiculous ones, going as far as the non-recognition of the abdication of the Roman Emperor, does not belong here; but in an assembly of estates it may seem incomprehensible to concede participation and voting in its deliberations and resolutions to such members as formally declare that legally they do not yet belong to the kingdom of Württemberg at all, that they do indeed wish to take part in passing resolutions binding on the Württemberg people, but that these are not yet binding for such helpers, and that only once a constitutional condition has come about with their assistance will they declare upon what conditions they are pleased to join in it. – Even if otherwise the phenomenon of the presumption of making laws for others, but declaring oneself not subject to them, may lie closer to hand, it will on the other hand be harder to find examples, among estates of the realm, of such a degree of slackness as to let such things please them and to concede, on such a condition, no less arbitrary towards the King, a share in the deliberations and resolutions.

One further estate, namely the *prelates*, took after a few days the insignificant step of putting forward in an address, but only as a *wish*, that they be *represented*¹⁾ as a particular estate in the assembly of estates and that the former

1) *Hegel's footnote.* Since in the assembly of the land of the former duchy of Württemberg all fourteen prelates had seat and vote, they were therefore not *represented* in it, but appeared as individual votes, as peers.

[496] rights be conceded to them. - Of the two prelates who were already members of the assembly of estates, the one, who had been summoned as chancellor of the University of Tübingen, declared that he did not know whether he represented the university or the church or the learned estate; the other, who had been summoned as evangelical general superintendent, made the naive remark that a good friend had advised him not to sign that petition of the other prelates, so as to appear impartial and to be able to support their cause all the more (II. Section, pp. 64 ff.).

The entire assembly of estates itself likewise places itself on a standpoint opposed to the actual relations of the world. It rejects the constitution given by the King and with it the instruction by virtue of which it is assembled, takes upon itself a vocation of its own, and resolves upon the non-acceptance of that constitution in a sense which contradicted the general constitution of Europe and of Germany, just newly founded by all the European powers. - The assembly of estates did not reject the royal constitution on the ground that it was contrary to the right which subjects can demand for themselves in the constitution of the state out of the eternal right of reason. What one had to expect it would let precede its rejection, an examination of that charter, it did not enter into at all, and it would surely have had to acknowledge the general principles of it; rather, it rejected it because it was not *the old-Württemberg constitution*, - and not even merely insofar as it differed from it; this examination too it did not send ahead, but dryly and expressly, because it was not precisely this former constitution, because the act through which it was to come into effect was not the mere restoration and revival of the old. - But the dead cannot revive; the assembly of estates proved in its demand that it had of the nature of the task

[497] that was to be solved not only no concept, but not even an inkling. It showed that it regarded the necessary element of the task as a whim and private arbitrary will of the King or of his ministry, and believed it had to do with a contingency, not with the nature of the matter. It did admit that some circumstances [were] new and that modifications would have to occur with regard to them. For these new circumstances it counted merely a couple of externalities which concerned the essence in the difference of the old and new relation as good as not at all, - namely the addition of an *estate of the nobility*, which, as noted above, wished to regard itself as not yet actually constituting a part of the subjects legally, hence in relation to the constitution, where the talk was solely of the condition of right, and which even declined to receive from the state, with the concurrence of the assembly of estates, the determination of a position in the Empire under public and private law. The other circumstance was the admission of the subjects belonging to *another Christian confession* to the same rights of citizenship of the state as the Lutherans, a circumstance which in any case did not concern the nature of the constitution, just as the former was not yet to be an object of it. As a further occasion for modifications the *enlargement* of the land by more than half over its previous extent was considered. In fact this circumstance could furnish a very important ground against the dry introduction of the former constitution of Old Württemberg, against which the assembly of estates sought, with advocates' arguments from former cases, from the old positive public law, from the formal concept of incorporation, to prove that the newly added part has a right to the benefit of the constitution of the other part. Fundamentally considered, however, for the main point the whole consideration of this respect, and above all the advocates' proofs, was something very idle, nearly a *querelle d'Allemand*; for even if Württemberg had received no enlargement at all

[498] and had remained wholly within its previous territory which had the old constitution, the alteration of position for it, the need and the necessity of a new constitution, would have remained the same.

For a closer illumination of this necessity there could now be developed, from very many sides, the *disadvantageous consequences* which the reintroduction of the old-Württemberg constitution would have had under circumstances quite differently diverse than merely those just mentioned. The culture of the time already demanded at least a compilation and sifting of the constructions and constitutions which, like the constitution of the German Empire, had run out into an *unshapely* edifice. One need only look at the meritorious *collection of the principal documents* of the fundamental constitution of the land of Württemberg, arranged by our Herr Privy Church Councillor *Paulus*, to see that such a condition of the foundations of the constitution is an inexhaustible armoury for advocates and consultants for deductions, but at the same time a formulation by which knowledge of the constitution, and with it, more or less, the matter itself, is withdrawn from the *people*, a formulation with which the time can no longer content itself. That in respect of this formality something has been accomplished, and that a business which seems to concern merely the *form* had to have influence upon the *matter* as well, will be discussed below. - As to the disadvantageous consequences, however, there can be set against them the so-called *beneficial* consequences, but above all the *right*, which is not to be made dependent on consequences; with regard to the latter in particular this has also been done by the estates sufficiently and to satiety.

With such an argument there arises the usual endless talk back and forth, because such grounds and counter-grounds have no final decision within themselves when the

[499] praetor is lacking who would have to give this decision. What matters is solely the nature of the matter, and this is in the present case very simple. The change which has been preparing for centuries and has been completed late enough is the already mentioned transition of the more considerable German lands from the relation of *fiefs of the Empire* into the relation of *sovereign lands*, i.e. of *states*. In the former the *prince* on the one side, *land and people* on the other - although the latter as subjects (often even to the degree of serfdom) - could stand over against one another with an independence which on both sides could almost approach rights of sovereignty. For between the two stood Emperor and Empire as an external bond, which held both in this self-subsistence and also held them together, barely, - as the private man is an independent person against the private man. In the relations which they tie with one another they proceed from subjective need and arbitrary will; but only because they are at the same time in *one state*, have an authority and courts above them, do relations become *contracts*, does it have a *complete* actual sense to conclude contracts, and are individuals upheld in their self-subsistence and in their relations. But the more impotent that intermediate and superior power proved itself, the worse off both parties had to be in their collisions, because, bound to one another in their independence at once as government and subjects, they could not get apart.

Such a condition, in which prince and people were linked by so external a power, brought with it that actual *rights of the state* were to be found on the side of the subjects. To rights of this kind belong most of those which flowed from the feudal relation; yet it would be superfluous to touch upon such here, because in Old Württemberg there was found only an insignificant nobility, whose rights were in general of no great consequence for the relation of the state. But essential mention is deserved by

[500] the right of the former Württemberg estates of the realm to hold the *tax chest* in their hands. There was connected with it for them the right not only to enjoy daily allowances themselves, but also to appoint officials, consultants and above all a committee, and to assign salaries from the tax chest to its members as well as to those officials. Indeed, this committee itself had the administration of the chest, from which it drew its salary, determined on the whole by the estates; but beyond this its right of administration extended so far that it even decreed for itself supplements to salaries and remunerations, and further decreed and paid out to its members as well as to other individuals rewards and pensions for real or imagined services; indeed precisely this application of the moneys of the land *for the personal*, for itself, which honour will most of all disdain to keep secret, was withdrawn from all control.

Very closely related to the internal disorder and ethical sinking into the mire that lie in such a private plundering and such a condition in general is the formal disorder of the state, that estates of the realm, by means of the chest which they hold in their hands, for themselves, as a kind of sovereign power, enter into connection with external powers for their purposes. From one's own chest it is no great step to the maintenance of one's own troops, and it would only be ridiculous to forbid the latter to estates by law, while through the former putting the power and the means for it into their hands. When the aforementioned intermediate and superior power of the Emperor and Empire was still present, such a consequence could be prevented in individual cases, - namely where that power was effective, as also in the case that it was pleased to be; but it remained a contingency whether this consequence was prevented or not. Yet in the German Empire there was no lack either of cases in which estates were entitled to keep their own troops, as for example in *East Frisia* the city of Emden, nor of the fact that in this very

[501] land, which lay further from the influence of the Empire, the estates themselves raised troops against their prince, concluded treaties with foreign powers and called their armies into the land and paid them. In this respect there is hardly a more instructive history than the excellent *History of East Frisia*²⁾ composed by *Wiarda*; we see in it a connected picture of the most shameful, repugnant and destructive disorder, which proceeded from the relation of prince and estates of the realm in whose hands there were rights that belong to sovereignty. In larger strokes, incidentally, the like is present, for example, in the history of France and of England, before these countries had completed their formation into states, not to mention Poland, only that these histories are also freer from the disgusting side, namely the complete formalism of right and of paper of the German land.

2) Editors: Tilemann Dothias *Wiarda*, *Ostfriesische Geschichte*, 10 Bde., Aurich 1791-1814

To the historian named the archives of the East Frisian estates of the realm, in whose service he himself stands and at whose commission he wrote his work, were opened. The Württemberg estates of the realm have not occasioned such a history; the famous *Moser*³⁾, who was capable of it and who was also their consultant, they drove out of their midst. Yet among other particulars which lie before the public, a pamphlet stands out which allows glimpses, at least for one period, into one side of the subject touched upon, into *the independent administration of the chest by the estates*, and which appeared under the title: *The Administration of the Württemberg Land Chest by the Former, Now Cashiered Committees of the Württemberg Territorial Estates; Drawn from Territorial Accounts, Files and Documents* (without place of printing) 1799. The assembly of the land, which in the year 1796, after some 25

3) Editors: Johann Jakob Moser, 1701-1785, jurist of public law

[502] years, was once again summoned together, examined the accounts of the *committees* it found; the pamphlet named supplies at least a part of the results of this examination. The preface says of it summarily: “The results of these accounts contain not only several tons of gold, which have been applied *contrary to law*, but they run into millions and amount, from the last diet in 1771 to the beginning of the present one, in March 1797, when an end was made of the abuse, to the enormous sum of 4,238,000 fl., say: *four million two hundred and thirty-eight thousand guilders of the state’s wealth*, over whose *faithful* administration and application the committees had *oath* and *duty*.”

This result may suffice to mention; to extract from it a detailed picture of how deeply independence has let this administration by the estates sink does not belong here. There would in particular be the manifold remunerations to pick out which the committee members allotted to themselves for every important and unimportant business over and above their ordinary salary (e.g. to a chancery clerk for having enquired after the Duke’s health), and so much that seems to be nameable as a formal swindle, in which the same family names occur especially often. Then the neat specimens of diplomatic attempts and missions, and above all their rewards, would also be remarkable; in the account of 1778 to 1781 there occurs a sum of 5000 fl., which was handed over in the year 1770 to a foreign Court Councillor for a journey to *Petersburg* to pursue the *land affairs mislaid there* (?); a journey to Munich in commercial affairs at 8700 fl., etc. - It is of no help to say that squanderings and plunderings of the state chest were *abuses* and *illegalities*; if in 26 years the sum of moneys of the land applied contrary to law can amount to four million, then certainly the laws are good for nothing under

[503] which such illegality is possible; a good constitution is surely only one when through it illegalities are punished and even more prevented. - If this was done to the green wood, one might ask, what shall come of the dry? If plunder and squandering took place at a time when Emperor and courts of the Empire still stood above the estates of the realm, when the estates themselves had ended a protracted, most costly lawsuit against their prince on account of extortions and illegalities and had taken over a great mass of debts - the discharge of which, for nearly 50 years up to this hour, may not yet be completed; - at a time which one hears extolled as a time of German honesty, of worthiness of the estates of the realm, of a felicity created by the constitution, in contrast to the corruption, the luxury and the wrong of more recent times!

But whether the evil, that the independence of the estates of the realm made it possible for them to plunder the state chest, be now a necessary consequence, or whether it could be checked by laws and altered institutions, there always remains the far greater evil in relation to the state, that the independence of the estates of the realm in the disposition and administration of a state chest makes it possible for them to make the course of the state difficult, indeed to obstruct it, partly on the side of internal affairs, partly in particular on the side of the political relation to other states, which lies in any case more remote from the estates of the realm, indeed is often hateful to them, and to the German ones has hitherto in general been foreign. The notion of wanting to put into the hands of estates of the realm, or of whatever corporation in the state it might be, a military power and army independent of the government would be regarded by everyone as a measure shattering the state; but it would be no great difference if the disposition of the whole or of a part of the state chest, and the authority to grant salaries and pensions from it, were to belong to such a corporation.

[504] It may seem that estates of a former German land which had such a disposition lose very much in authority and power if this is no longer conceded to them. But it has already been remarked that through the change of a land from a fief of the Empire into a sovereign state the estates have gained infinitely in authority and power, and that only for the sake of this new accession can that earlier authority not remain united with it. The state would with such provisions cease to be a state, and be shattered by the two sovereign powers which would be found in it; - or rather unity would restore itself, either in that the so-called estates, as we have seen in more recent history, overthrew the hitherto existing government and seized it for themselves, or, as we have likewise seen, in that the governments drove such estates of the realm away and thereby saved state and people. The greatest guarantee and security of the estates of the realm is precisely this, that they do not possess a power contradicting the nature of the matter, - the most foolish thing, by contrast, is to seek in such a power a protection for themselves and for the people; for such a power makes it a right or, sooner or later, a necessity to abolish such estates of the realm.

It is still to be added that with the qualitative difference between a fief and a state the *closer formality* too is wholly altered which the *relation* between prince and subjects had in the former. Since prince and land stood over against one another as owners and holders of particular prerogatives in the manner of *private parties entitled* and thus under a third, the power of Emperor and Empire, they were, as if under a praetor, in a position to conclude *contracts* with one another and to conduct themselves towards one another in the manner of private law. Even in more recent times, when truer concepts have taken the place of the notion, formerly taken without thought or reason, that governments and princes rest on divine authority,

[505] the expression *contract of state* has still seemed to contain the false thought as if in the state the concept of *contract* fitted truly upon the relation of prince and subjects, of government and people, and the legal provisions of *private law* which follow from the nature of a contract could, indeed should, find their application here. A little reflection lets one recognize that the connection of prince and subject, of government and people, has as the foundation of its relations an *original, substantial unity*, whereas in the contract one proceeds rather from the opposite, namely the equal independence and indifference of both parties towards one another; an agreement which they enter into with one another about something is a contingent relation, which comes from the subjective need and arbitrary will of both. From such a contract the connection in the state is essentially different, being an objective, necessary relation, independent of arbitrary will and pleasure; it is in and for itself a duty on which the rights depend; in the contract, by contrast, arbitrary will reciprocally concedes rights, from which only then duties flow. - With the transition of a land from its condition of fief of the Empire into a state, the previous self-subsistence of the two sides, mediated by a third intermediate and superior power, and with it also the whole contractual relation, has fallen away.

The fundamental error of the position which the Württemberg estates of the realm gave themselves lies in this, that they proceed from a *positive right*, regarded themselves wholly as if they still stood on this standpoint, and demand the right only on the ground that they formerly possessed it. They acted as a merchant would act who, on the strength of a ship that contained his fortune but which has been lost in a storm, wanted to continue the same way of life and to demand the same credit from others on it,

[506] - or as a landowner on whom a beneficial flood had laid a covering of fertile topsoil over the sandy ground he possessed, and who wanted to plough and farm his field in the same way as before.

One sees in the manner in which the estates of the realm summoned in Württemberg conducted themselves precisely the counterpart of what began 25 years ago in a neighbouring realm and what then resounded in all minds, namely that in a constitution of the state nothing should be recognised as valid except what is to be recognised according to the right of reason. One could have the apprehension that the leaven of the revolutionary principles of that time, of the abstract thoughts of freedom, had not yet finished fermenting and been digested in Germany, and that assemblies of estates would seize the opportunity to make similar attempts and to bring about confusions and dangers. Württemberg has indeed given the example, consoling even to this degree, that such an evil spirit haunts no more, but at the same time also that the immense experience which has been had in France and outside France, in Germany as much as there, was lost upon these estates of the realm, - the experience, namely, that the extreme of stiff persistence in the positive public law of a vanished condition and the opposite extreme of an abstract theory and of a shallow prattle have equally been the entrenchments of self-seeking and the sources of misfortune in that land and outside it. - The Württemberg estates of the realm have wanted to begin again on the standpoint on which the former estates of the realm found themselves; they did not enter into the *content* of the royal constitutional charter, and did not ask and seek to prove what and that something is rational right, but persisted outright in the formalism of demanding an old positive right on the ground that it had been positive and contractual. One had to regard the beginning of the French Revolution

[507] as the struggle which rational public law entered into with the mass of positive right and of privileges by which it had been suppressed; in the proceedings of the Württemberg estates of the realm we see the same struggle of these principles, only that the places are exchanged. If then the majority of the French estates of the realm and the popular party asserted and reclaimed the rights of reason and the government was on the side of the privileges, so in Württemberg it was rather the King who placed his constitution in the domain of rational public law; the estates of the realm, by contrast, set themselves up as defenders of the positive and of the privileges; indeed, they present the perverse spectacle that they do this in the name of the people, against whose interest those privileges are directed even more than against that of the prince.

Of the Württemberg estates of the realm one could say what has been said of the French returned émigrés: *they have forgotten nothing and learnt nothing*; they seem to have *slept through* these last 25 years, the richest that world history has perhaps had, and the most instructive for us, because our world and our representations belong to them. There could hardly have been a more formidable mortar for pounding to pieces the false concepts of right and the prejudices about constitutions than the judgement of these 25 years; but these estates of the realm have come out of it unscathed, as they were before. - *Old right and old constitution* are words as beautiful and great as it sounds sacrilegious *to rob a people of its rights*. But whether what is called old right and constitution is right or bad cannot depend on age; the abolition too of human sacrifice, of slavery, of feudal despotism and of countless infamies was always an abolition of something that was an old right. It has often been repeated that *rights cannot be lost*, that *a hundred years of wrong cannot make a right*, - one should have added: even if the hundred-year-old

[508] *wrong* had been called *right* during these hundred years; further, that hundred-year-old and actual positive *right* rightly perishes when the basis falls away which is the condition of its existence. If one has the pleasure of threshing empty straw, one may assert that to the one spouse, even after the death of the other, his right to the other, and to the merchant whose ship has been swallowed by the sea his right to it, still remains. It has from of old been the sickness of the Germans to hang on to such formalism and to drive about with it. So also in this Württemberg assembly of estates nearly the whole content of its activity is confined, with an advocate's obstinacy, to the unfruitful assertion of a formal right. In vain did a very few voices try to lead it to the matter itself, among others the president of the assembly, Herr Prince of *Hohenlohe-Öhringen*, to turn it occasionally from the procedural course, - for the mortar in which the time was pounded for 25 years had effected nothing upon them.

From this conduct of the estates of the realm, of keeping to the formalism of positive right and the standpoint of private law where the concern was with rational right and public law, it follows for the history of their proceedings of a year and a half that these are extremely empty of thoughts and for so great an object as that laid before them, *the free constitution of a German state of the present time*, contain little or almost nothing instructive. Instead of a fruitful labour, therefore, there presents itself almost only an external history, of which the main course is now to be given.

It has already been mentioned that after the King had solemnly opened the assembly of estates on 15 March 1815 and, having handed over the constitutional charter, had left it to itself, Count von Waldeck, no Old Württemberger,

[509] nor for himself a holder of an individual vote but a substitute of one, came forward with a speech which began with the previously mentioned praise of the King, of the "exalted monarch, who has shown *rare* strength, has *extended* Württemberg considerably and now restores the constitution founded *for ever* by his Illustrious Forefathers, all of them princes of *rare* qualities". - It could not well have been otherwise than that the first utterance on the part of the assembly of estates, if not an acknowledgement of the royal act just performed, of giving his realm a constitution, would yet contain a eulogy in general terms which showed itself to be seemly. This eulogy, like the whole speech, is now so contrived and equivocal, the stamp of subtlety so impressed on every word, that the assembly of estates could take satisfaction in the skill of its speaker, who had shown the due devotion outwardly but had reserved everything inwardly; - the King and the ministry, by contrast, could take these twisted and concealed expressions as mockery, all the more as the *resolution* is expressly ascribed to the former to *restore* the *bond recognised for centuries as beneficial* between the ruler and *all* the estates of the state and a constitution *satisfying all* parts, and to *sublate* again the *abolition*, which took place nine years ago, of the *constitution founded* by the *Illustrious Forefathers* for *eternal* times. One might have taken this assurance for a bold presupposition if it had been acted on immediately and only in its sense; but it could, as said, appear rather merely mocking and malicious, since the grievance of the assembly of estates from this very first sitting had only the content that, on the contrary, the King had precisely *not* wanted to restore that old constitution, that with the constitution originating from him *not a single one* of the estates of his state, *no part* of it (apart from the King himself and his ministers) was *satisfied*.

The further course of this speech is a historical compilation of the fortunes of Württemberg under its constitution; the general result that emerges is that the condition of the land at all times *while it had that constitution was wretched, depressed, unhappy*. From this the conclusion, contrasting with such a premise, is drawn "that the old Württemberg constitution has *made the land happy* for centuries, that it has the most decided advantages over *all* constitutions of *other* lands, is *without doubt* from of old the best constitution of a German land, the object not only of the admiration of Germany but *even* repeatedly of the *attention* of England". Hereby, and because in it everything is determined by contract and nothing doubtful, because it is guaranteed, sworn to by all rulers, the people has not renounced it, etc., it alone is to be recognised as *fundamental law* and *fundamental contract*. A few modifications, which have become necessary through the altered circumstances, those mentioned above, are to be based only on it. The address proposed accordingly by the speaker and accepted by the assembly does not express these thoughts in direct style but brings them obliquely into the form of indirect *hypotheses* in the following manner: *If* the people has elected representatives only on the presupposition that the old, inherited constitution, confirmed etc., which *has made* Württemberg happy for centuries, must be laid at the foundation of all modifications, *if* further the majority of the mediatized lords have had to reserve their rights and the pronouncement of the Congress, *then* the estates recognise with *most humble thanks* that the King in the opening of this day has given them an *occasion* for *deliberation* on the *application of the newer relations to the old relations of the land*. *Just as* the assembly must therefore *reserve* to itself to lay *the outcome* of its *deliberation* before the King, so they do not doubt etc.

Quite differently from how this hypothetical, concealing style reads, quite differently from the sense that only a *deliberation* was reserved, that an *outcome* of the deliberation should be laid before the King only in the future and, if one were obtained, then, the assembly in its very next sitting expressly states the opinion of its address to the effect that it had thereby declared that only on the *basis of the old Württemberg constitution* could *negotiations* be conducted on the newer modifications brought about by particular circumstances.

After the speech of Count von Waldeck and the reading out of his prepared address, there followed, once only a single deputy had made some exhortatory remarks urging the signing of the address, the silent, *unanimous* acceptance of it by the assembly.

The *calculated* style of report and content of the speech and address, interwoven on the one hand with a boldness that one could even call mockery and on the other hand contrived, concealed, stiff, has already been pointed out. The diplomatic negotiations of more recent times show, for all the caution, circumspection and calculation of expression, an open, direct, dignified bearing and, with the greatest prudence, least of all a self-satisfied cunning. How much more should one have expected from a German assembly of estates frankness, liveliness and dignified openness in its first declaration, instead of the repellent contrivedness and concealment and then of the dumbness with which the rest of the assembly hid behind that contrivedness!

But what it afterwards always prided itself greatly upon in this is the *unanimity* with which the resolution to accept the address is said to have been passed. What the truth was with this, and with the external manner of pushing the address through in the sitting, is shown by the following sitting and the further course of the proceedings. In this sitting (of 17 March) *six gentlemen of the nobility*

[512] protest against the statement contained in the address that the *nobility as a whole*, there present, had reserved its rights. Their declaration delivered on this points out that the speeches of the two members of which the address was the consequence were delivered partly so quickly, partly in so weak a voice, that they could not be heard; further it is remarked that *rising from the seats* was supposed to take the place of a formal vote, but the occasion and the purpose of this rising were not generally known. - The formality of voting had above all to be determined in an assembly and known to its members; even if for the first moment a manner and way had to be devised, it had to be accompanied by an utterance and declaration that its meaning could be subject to no doubt. The picture of dumbness is completed by the mention of the quick reading out of the addresses and the soft voice with it. Is this a picture worthy of the first appearance of an assembly of estates, of an appearance with which it took for ever its decisive, indeed its only resolution? - Those six members gave the unreserved declaration that they accept gratefully the constitution given by the King. This explicitness contrasts sharply with the turns of the address, for the sense of which one otherwise had to be prepared and instructed in order to know that it was to be the non-acceptance of the constitution. It would have looked more open and more worthy of an assembly of German men and representatives of the people if it had declared its non-acceptance of the royal constitution as unreservedly as those six noblemen their acceptance. In what follows the *delicacy* to be observed towards the King is at times mentioned; but genuine delicacy lies without doubt in a cultivated frankness, and the most undelicate conduct and tone, towards the King and towards itself, is surely the contrivedness and bearing mentioned above.

More important, however, is that a main resolution should have been preceded by not merely two speeches scarcely touching the matter, that in general the *unanimity* of the resolution, instead of being able to count as an advantage, had rather to redound to the assembly's greatest reproach and blame. One sees an assembly of estates, according to the great majority, already agreed beforehand about its resolution and the matter settled in private. Another part shows later partly an *opposition*, but above all it shows complete indifference towards the nerve of the resolution, namely towards *the old constitution*; this part makes for itself neither a claim to the formal right nor to the content of it, but wants only a good and therefore rather a better constitution than the Old Württemberg one. – One sees, therefore, an assembly still new in its situation, which has been brought to reserve and dumbness by ignorance of its components, by uncertainty as to what is to come about, by unaccustomedness and inexperience, and which is overawed by the contrivedness and concealing decisiveness of some members. If the assembly had grasped its position and concept more clearly and courageously, it would rather have made the greatest openness and fullness its law and, instead of being dumb, have had to hold it the greatest thing, since it had been granted it, to have the word. Even if the unanimity had been present according to the real intention or had arisen from intimidation and want of self-confidence, it had in all cases to make it its duty, if one wants to call it so, to choose an *Advocatum Diaboli* – and this name seems not too unsuitable considering the animosity shown against the royal constitution –, it had ex officio to develop itself and to set in the brightest light all the grounds that could be found for the acceptance of the royal constitution and then likewise to let an unreserved statement of its real opinion

[514] and a full exposition of its motives precede its resolutions. But such a deliberation neither preceded nor followed the resolution; yet an assembly of estates is there not only so that it may not act without deliberation, but so that it may hold its deliberations on the interests of the state before the people and the world.

When some months later Herr *Gleich*, representative of Aalen, delivered a speech which was entirely opposed to the hitherto undeliberated presuppositions of the assembly, the committee which had to make a report on it put it to him that such a phenomenon must seem strange and arouse general disapproval in an assembly where *concord* and *patriotic honesty* had hitherto kept *every foreign impure influence* at a distance. What? A deputy who takes courage at last to let his dissenting opinion be heard aloud against this silent and dead unanimity must thereby expose himself to the allusion to *foreign impure influence*? In any case, the direct accusation of impurity, or complete abstention from mere insinuation, would have been more dignified. - Incidentally, right at the beginning of the committee's report the purpose is attributed to Herr Gleich's speech - or rather it is said that it *seems* to have the purpose - of forming an *opposition party* in the assembly so *most gloriously characterised* hitherto by concord. Whoever has reflected at all on the nature of an assembly of estates and is acquainted with its phenomena cannot fail to see that without opposition such an assembly is without outer and inner liveliness, that precisely such an antithesis within it belongs to its *essence*, to its *justification*, and that only when an opposition comes forward in it is it actually constituted; without one it has the shape only of a *party* or even of a lump.

The reporter has dwelt so long on the manner in which the assembly of estates

[515] came forward because it is not only remarkable in itself but also characteristic of the whole sequel. With regard to the *formality* of the course with which the assembly conducted its business, two circumstances still deserve to be pointed out. - The course of its proceedings within itself was in general this, that for a matter arising a committee was appointed by it, a report was made by the latter, then debate was held and thereupon the resolution was to be passed. - In the *election of the committee* it was most frequently, especially at the beginning, when it mattered most to take possession and to overawe, throughout the vice-president who proposed the members *by name*. This officer, chosen by the assembly, proposed for the first committees, after only two members had as yet shown themselves publicly in the assembly, at once the members who distinguished themselves for good as the heads of the Old Württemberg party. It followed from this that the *word* came completely into their hands, all the more if one sees the otherwise prevailing *delicacy* of the members of the assembly of estates towards one another. This went so far that in one case, where the assembly had resolved to appoint a committee of *twelve* members, and eleven had received the majority, but for the twelfth place *four* members had equal votes, it did not now add *one* of these four, whereby three of them would have been *excluded*, but rather, contrary to its resolution, appointed all fifteen to its committee of twelve members. - Right with the second committee to be appointed a striking contrivedness then occurs, in order to bring it about that the four heads appointed to the first should also not fail to become members of the second. It is very essential to the freedom of an assembly, given the great influence of a committee in general, that the same individuals should not fill all the committees, if every matter arising has to be prepared

[516] by such a one, so that this preparation for everything may not remain in the same hands. This influence is moreover almost unconditional in an assembly where almost the sole, at least the main, exposition in a matter proceeds from the committee and, so to speak, it is actually not discussed at all.

The other thing worth noting is namely the manner of the *speeches*. One finds in the proceedings no speeches delivered freely but for the most part only speeches read out, fewer and only short oral utterances, in general no lively speech and reply; only once toward the end of the assembly, when instead of the matter the *person* of a dissenting member, Dr. Cotta, was made the object, the utterances, and among them rather indecent personalities, fell, not as otherwise usual as *vota scripta*, but this time without preparation blow upon blow; the natural eloquence showed itself which has still been preserved in our market-places for such cases; but the eloquence which prevailed on a Roman forum one has not seen appear. - That the reports of the committees were composed in writing and read out goes without saying elsewhere too. But what was called *debating* thereafter consisted for the most part in this, that, sometimes several days and weeks afterwards, one or several members read out a *votum scriptum* brought with them, and perhaps again days and weeks later another member produced a similar vote. In one and the same sitting there could therefore follow a reading out of several essays one after another, each of which related to an entirely different object, and quite often had no further sequel than that it had just been read out. Precisely the enlivening element which results from a gathering of men being placed face to face, in order to assert, prove, refute, move, from countenance to countenance, from mouth to mouth, with the lively presence of spirit, falls away as good as entirely through that written

[517] method. – A reading out of many sorts of treatises one after another cannot be called *discussing*. Rightly it is a rule in the English Parliament that the reading out of written speeches is not permitted, partly because such an essay can very easily be the work of another, but partly above all because the whole nature of such an assembly is thereby altered. Apart from a few speeches composed with a lively sense, though likewise read out, the present volumes of the proceedings consist chiefly of a collection of legal opinions, with citations not merely from the litany of recesses of the diets, hereditary settlements, princely testaments etc., but also, for example, from the *Corpus Iuris*, Montesquieu, Zonaras⁴⁾, [J. U. v.] Cramer in the treatise *De tacente dissentiente* (in *Opuscula* T. II, and in the *Usus philosophiae Wölfianae in iure*, spec. XII [1740]) and similar stately erudition, of deductions and stillborn lawyers' writings larded with them.

4) *Editors*: Johannes Zonaras, Byzantine writer, first half of the 12th century

If an assembly of estates represents the people, is such a manner of proceeding the way in which a people expresses itself, in which an assembly of this kind and a people itself is worked upon? Treatises composed in that manner in the study are also addressed only to studies or destined to be files for men of business. Assemblies of estates, however, have their essential public in the people; how can this take an interest in such paper proceedings and pedantic deductions and keep pace with them? Rather its representatives in such a way isolate themselves from one another and still more from the people itself and carry on the affairs of the people rather with its exclusion, even if the sittings were public. The physiognomy of the proceedings of the Württemberg assembly is in such a way not much different from that of the

[518] activity of a society of young people who combine to compose essays for their practice, for the advancement of their culture, and lend themselves to one another to hear them read out.

Apart from the material side, this written manner, with the consequences it had to have on the whole course of the handling of business, was probably also a ground for the utterance of a representative cited in Section VIII, p. 20, declared indeed to be *unseemly*, "that if the petitions received had not furnished matter for entertainment, one would not have known how to ward off *boredom*". - In any case, if the debates of estates of the realm were to consist chiefly in a communication of written deductions, their personal assembling would be rather superfluous and many costs would be saved; the whole could be dispatched by circulation of the essays. Whoever is accustomed to reading in any case prefers to read such essays himself rather than lend himself to listening; but everyone would also have the choice of having them read out to him by his wife or a good friend, and the votes could then be sent in in writing just as well.

But to pursue the historical further, right at the beginning of the sittings of the assembly of estates the great political event occurred, *the arrival of Bonaparte in France* from the island of Elba. Already two days after the opening of the estates the King informed them of the measures taken in Vienna. An occurrence of this kind was suited to put in a light, through their conduct and bearing in it, the disposition and the whole character of a German assembly of estates. If it had been possible that a German people could have received this event with joy and hope, it might have seemed dangerous that estates of the realm, which were in the intentions already indicated, opposed to the will of their King, should be gathered together at this time. But since that was impossible, such an

[519] assembly had to seem all the more desirable, in order to be able to summon with united energy the means which so far-reaching an occurrence, seeming to threaten afresh the peace of Europe, required especially in the lands lying near France.

It has been only too often the pernicious, unpatriotic, indeed in a higher sense often criminal artifice of estates of the realm to want to use the pressure of political circumstances in which their government was placed, instead of openly making *common* cause with it to ward off the distress of the state, rather to wrest advantages for themselves from the government and at the same time, along with the external, to produce an embarrassment internally, whereby the strength of the government outwardly, instead of being increased, was weakened and, in essence and in deed, common cause was made with the enemy. - On 28 March a member, in full feeling of the importance of the circumstances, moved (II. Section, p. 41) that the assembly for its part should declare to the King that the *last drop* of blood, the *last gift* of its goods was ready *for Him* and *the good cause*, - how the assembly wanted to achieve this by a general arming, by a loan to be opened, how, however, it saw itself in a position to carry it out *only* in the *old-constitutional* way. - A part of the *nobility* recognised in an address to the estates (II. Section, p. 14) that the highest danger required the highest exertion, and asked, without adding conditions, that the assembly initiate steps so that the King might order a general arming of the land and drilling in arms. Addresses from many district offices came in in a similar sense. One from Esslingen on 29 March (II. Section, p. 48, the others have remained unprinted), given the provision already made by the King of setting up in each district a land battalion of 500 men, expressed the apprehension that *too many sparing* considerations were prescribed and that the defensive measures might thereby suffer

[520] difficulties and delay; it wished for a *general levy*. An enclosed report of the village mayor *Reinhard* of Obereßlingen is likewise printed (II. Section, p. 50) as a "vigorous declaration"; it states: "The attempt to obtain volunteers as sergeants seems to be in vain among the discharged soldiers. The people have, like *many* or *most of the people*, too dull a feeling for love of the fatherland and for defence. Everyone who is sound should take up arms, from the 18th to the 40th year. If the Swabians are called out in mass, they go and strike with force, *but if they have free will, nothing happens!!*" - The assembly of estates surely did not mean to make to this village mayor, in that he speaks thus of his people, in the midst of whom he stands, the reproach of *slandering the people* - an expression which has become popular in our days - when it gave his report the distinction of having it printed and the title of *a vigorous declaration*.

The assembly of estates had now, however, for this as for its other concerns already laid fetters upon itself by assuming that motions and proposals which it made could be construed by it as an *exercise* of the right of petition conceded to it in the royal constitution and, as a *consequence* of this, as a *factual recognition* of this constitution. As if the assembling of the assembly of estates on the ground of this constitution had not already been a quite formal fact, and as if the representatives of a people who are assembled under such circumstances, under whatever title, form and authorisation it may be, did not have to banish all other considerations, in particular the fear of *consequence-making*, and to think and act vigorously for the rescue of their people alone!

At first the assembly had those addresses which had come in read out and put them ad acta. Of the general arming of the land it was remarked, rather untimely, as a *merit*

[521] of the town of Tübingen that it had already made the motion for it at a time when *the circumstances* in France were *not yet known*. If mere patriotism in an external danger can so easily hit upon the idea of a general arming of the people, then an assembly of estates was to be credited with a riper, better insight also into the military, but above all the political advisability of such a measure, - at a time when the new assembling of the estates itself occasioned the most manifold intrigues and inner tension. But in what light could the proposal of such an arming be placed if it appeared still earlier, before the event in France externally motivated such a measure! Moreover experience had taught that such a constitutional arming, in the many cases in the last 25 years in which Württemberg in particular was overrun with war, had shown not the least efficacy, indeed had not shown itself at all, as according to its whole intention and condition it could not well have been otherwise; in so far it may seem almost laughable even to recall such an arming of the land under the danger of the time. If the estates of the realm put forward a proposal of which they had to have the great probability that the King would give it no effect, then faith in their seriousness and good will became still more doubtful if they then omitted on their side to cooperate in the military measures which the King recognised as expedient and ordered.

Among the means belonged in particular the raising of the extraordinary war expenditure, concerning which the King had the estimate laid before the estates under 17 April. According to it, the costs of equipping and maintaining an army of 20,000 men, which the King had bound himself to his allies to place in the field, alone exceeded the peace establishment by $3\frac{1}{2}$ millions; to this were added the burdens of the marching through of the allied armies,

[522] concerning which a convention had likewise been concluded. The King demanded of the estates a deliberation and, in the shortest possible time, a declaration as to how these extraordinary resources were to be raised. - The answer to the question what the Württemberg estates, expressly called upon by their King as well as by their constituents to cooperate and empowered to support the cause of Europe, have done to avert that danger of a unique kind and of quite extraordinary character, comes out thus: *that they have done nothing at all*. The whole merit of how Württemberg at that time came forward in the ranks of all the European powers they have rather left to the King, the then Crown Prince, the ministry and the army. - The government, for the fulfilment of its general, moral and positive obligations, pursued its course for itself with honour and glory and, as it seems, found itself not in the least held up by the refusal of the cooperation of the estates. The estates, on the other hand, obtained nothing but to have shown their ill will, their misjudging of their fine position and the dispensability of their cooperation.

Subsequently they submitted to the ministry some further addresses directly concerning this matter, which no longer spoke of readiness for sacrifices but were meant to provide for the relief of the admittedly exhausted land by demanding the contribution of the royal domain chamber, of the church property etc. to the burdens of war. For that purpose the King had already had effective negotiations conducted with his allies and the army commands concerned; the answer which the estates received to their demand was simply this, that whatever was contributed from special state revenues would have to be replaced to the financial estimate from other sources, and that here it was precisely a matter of extraordinary resources. - In the sense of the

[523] earlier relation, where prince and land each had, as it were, its private chest, the endeavour of both parties had to be directed to shifting as much as possible of the burdens on to the other. Since for the estates there was as yet nothing at all recognised of the existing relation of a state, and in particular the separation of a *civil list*, to which the King had already declared himself willing in the constitution, had not yet been regulated, indeed had not yet come up for discussion, the notions, taken from past relations and all the more confused in the altered time, of an opposition of the interest of the land and the interest of the state, of a chest of the land and the chest of the state, could have no significance, much less application and efficacy.

The main reply, however, which the estates gave to the King's call for cooperation in the extraordinary circumstances of the fatherland was that they made such cooperation dependent on the granting of their demand, the withdrawal of the royal constitution and the reintroduction of the Old Württemberg one. That nobility which on 4 April, for itself and, since it believed it could vouch in this respect also for the nobility of the Empire as a whole, for this too, declared in an address to the estates that it recognised as its duty to fight in the ranks of the general arming of the land and with the other estates to sacrifice goods and blood for the fatherland, *explained* this on the following day to the effect that the declaration submitted was suited merely for the assembly of estates, by no means for the royal state ministry, since essays that *flow from the heart are exposed to such manifold interpretations*. - In fact this explanation was the most immediate example of such manifold capacity for interpretation. - It therefore subjected its readiness to join in the defence of the fatherland with goods and blood to the preliminary steps to be taken by the assembly of estates.

These preliminary steps, however, consisted in the assembly, in an address to the King of the same date, bringing together both, the constitutional matter and the measures which the present situation required, although the King had just had it announced to it that for a definitive decision on the former matter he was awaiting the return of the Crown Prince. This ground, evasive for the moment, was to the estates an *argumentum ad hominem*, since they proved in lengthy deductions of public law that the agnates had the right that their approval should be obtained in constitutional matters; the estates could draw from the consultation of the Crown Prince the *consequence* of a *factual recognition* of this right. - The estates declared themselves more closely in their address to the effect that nothing was more urgent than to put the people, through the *united guidance of the monarch* and of the *estates*, in a position to defend the fatherland, and that the will of the honest people offered itself to all that *seemed necessary* to its zeal; but they could build their actions only on the foundations of the hereditary-land constitution, and the restoration of the state credit was possible only through *a constitutionally guaranteed loan*, - that is, in that the collection of the taxes and the disposal of this part of the state treasury would be handed over to the estates. The like occurred in an address of 18 April, in which they state "that for all subjects, for the *new* as for the *old*, the name *old constitution* has a *magic power*". It had however been shown from the petitions and addresses that came in that the general indignation at the re-appearance of Bonaparte, the feeling of the danger threatening the fatherland from it, had by itself proved a magic power, had worked like an electric shock. If in the address it is stated immediately before that the fruit and wine harvest has been frozen and that therefore a great part of the subjects are literally wrestling with despair, it is not to be seen how the old constitution

[525] could here have proved its magic power, how the estates could refrain, under such hard external and internal circumstances, from bringing about *united help in deed*. - Likewise it has further been sufficiently shown that the Old Württemberg constitution exerted no magic power at all on the newer subjects - more than half of the land -, that they regarded what they had got to enjoy of it rather as a kind of plague, as the *worst scourge of the land*, - as will be stated further on. Otherwise, however, the whole course of the proceedings of the estates may well be regarded as a history of the magic power of that name to which the assembly had surrendered itself right from the beginning without going into the *matter*; - or rather, what kind of matter formerly lay hidden under that *name* has already been touched on above in mentioning the house-keeping of the estates' treasury, and the citation still to be made of the depressing *scourge of the land* will yield something further. In the present case it is the *black magic* of the word which let the words, *to be ready to sacrifice goods and blood for the good cause*, come to nothing further than remaining *words*. - Of this magic power the estates state more closely that nothing secures the fatherland *so certainly* against *the poison of the dangerous principles*, which are now spread again from France as 25 years ago; - it has been remarked above that that power has preserved the estates not only from the poison of the past 25 years but also, so to speak, still much more from the *rational concepts* of them.

As to the closer sides of the position which the estates gave themselves, in rejecting the royal constitution on the ground of which they were assembled they were in uncertainty whether they *existed at all or not*. Consistently they should, after the opening performed by the King, have dissolved at once and dispersed

[526] or rather, since the mode of election was already not in keeping with the old constitution, not have let themselves be elected at all and the electors not have had to elect. - Since it now became a basic maxim of their activity to do nothing from which a *consequence* as to their *factual* recognition of the royal constitution could be drawn, they walked as on eggs even in the most external formalities. Right in the first address of 15 March they prudently abstained from the signature "*Assembly of Estates*" and signed themselves "*Summoned to the Assembly of Estates*". When it was pointed out to them in the royal resolution of the 17th of the same month that the King had to expect petitions and motions in the prescribed form not from such but only from the assembly of the land constituted by Him, since only to the *assembly of the land* do the *rights determined* in the constitutional charter *belong*, that he would otherwise not let himself be *held up by formalities* and would for the time being overlook the lack of form - as this resolution in fact entered into the content of the petition of the estates -, the majority found in the signature "*Assembly of Estates*" a *prejudice* and *inconsistency*, until the representative of Marbach, Herr Bolley, remedied this scrupulosity by the neat expedient of signing so in their next petition (of 22 March), but at the same time of lodging in it a *reservation*! In this petition it is also said that a *scruple with regard to formalities* would have been an *offence* against the *sole purpose, the welfare of the monarch and of the subjects*, - namely in respect of their mode of election and their appearance after the summons. Why then do they remain so scrupulous about formalities in other respects? Have they not thereby offended against *that sole purpose*, as they say? - Notwithstanding that *conclusum* and the reservation attached, the secretary nevertheless had to announce in the sitting of the 28th that it had occurred to him only after the petition had been drawn up

[527] - which drawn-up petition had moreover been read out publicly once more in the assembly in the next sitting of 23 March and signed by the president, the vice-president, a holder of an individual vote and an elected deputy and the two secretaries - that the closing word "Assembly of Estates" *was still missing* in it. This defect was then removed by a supplementary petition. In the next royal resolution the assembly was instructed to remove, by an orderly conduct of business, the faults even of external form which had been noticeable in its petitions hitherto, to that end to keep to the conduct of business prescribed in the constitutional charter and in particular to elect a *vice-president*, likewise secretaries and the officials of the estates.

It would be too lengthy and too tedious to pursue further the pedantic course of these precautions. Although His Serene Highness the President repeatedly called upon the assembly to the elections of those officials, for whom the King had admittedly also prescribed the taking of *oaths of office*, and (Section III, p. 151) sought to bring it away from its constant "*repetitions, leading no further, of propositions once uttered*", "*from its procedural*" lawyers' course, and, since such an election could in any case take place *without prejudice*, reminded it "not to put the good itself at stake *over clinging to forms* and to the *empty sound of the word*", they were far too persistent in their scrupulousness and shrewdness to let themselves be moved to such acts, insignificant for their claims, - if only their other acts had had more content and significance!

The more determinate assertion of the assembly of the estates of the land was that, in right, the old constitution had *not perished* and was not *sublated*, that it and the *people* could take the royal resolution, after the ceasing of the hitherto existing hindrances, to give a constitution only in the sense

[528] that the *old one was to enter again into actuality*. At the same time it demanded that the King should have its deliberation and approval obtained for ordinances which he issued during the assembling of the assembly; thus it demanded to exercise rights as *actual old estates of the realm*. So too it appointed no vice-president on the ground that this office was *no institution of the Old Württemberg assembly of the estates of the land*, but let itself be content with the presidency of His Highness the Prince of Hohenlohe-Öhringen, and with the voting together of the mediatized lords, likewise no institutions of the old constitution. - For its sole demand, made simpliciter, of the restoration of the old constitution it relied on the *will of the people* expressly declared at the elections and in a multitude of addresses submitted. - This is a *great word*; the representatives of the people have most to guard against profaning this word or using it lightly. What the truth was with the will of the New Württemberg people has already been mentioned. It has also been cited what a man of the people, the village mayor Reinhard, said, that so many, indeed most of the people, have too dull a feeling for love of the fatherland and for defence. But apart from this, it belongs to the hardest and therefore to the greatest thing that can be said of a human being that he *knows what he wants*. The reason that the first comers are not picked up from the people as representatives of the people, but the wisest are to be taken, is that it is not the people that knows it, but they that are to know it, what its *true* and *actual will* is, that is, what is *good for it*. How greatly they misjudge their dignity and *vocation* if in this they hold to the loud cry, and above all to so *arid* a cry as "*old constitution*", indeed even want to rest on the petitions and addresses in this regard.

But if they placed in such a ground the *nature* of their *whole* authorisation and refused to recognise the royal

[529] authorisation, they gave themselves a position stepping out of the organism of the state, standing over against the government as an independent power, the basis of which, if the *poison* of a revolutionary principle is not already in it, at least borders closely on it. In accordance with this position the assembly of estates called its dealings with the government *negotiations*, - there were *notes* which it exchanged with it; it called its submitting of addresses to the ministry a *diplomatic* way (Section VIII, p. 81) - a way which only *sovereign states tread towards one another*. The situation in which the government found itself through the distress of the moment and even through the tension caused by the assembling of such an assembly of estates under such circumstances, - besides, the circumstance that the King perhaps did not care to break off so soon his work begun on his own authority, may have contributed their part; but the moderation of the King is always also to be recognised in overlooking the informal and presumptuous character of such a relation, in engaging with the assembly in this way and, although it disdained to be the estates of the realm of his kingdom, yet continuing to treat it as such.

So much for the *formality* of the relation into which the estates of the realm put themselves. But to consider more closely the essential side of it, it can be remarked that, after the King had made known his constitution to them, they could do *three things*: either refuse to let it count as binding *unexamined*, hence enter into an *inquiry* into it and declare themselves only after its result; secondly, accept it, but reserve to themselves to work on what was still missing and undeveloped and to occasion corresponding proposals of laws; or thirdly, reject the royal constitution unseen, produce one on their own part and demand of the King the acceptance of it. - The demand may seem not merely fair but absolutely just, that a people must itself examine the

[530] constitution which is given to it and that validity could be given to it in no other way than by the people accepting it with its will and insight; if it were not so, one may add, despotism, tyranny, infamy could put the people in whatever fetters it pleased. - And yet, in order to consider the matter from no other side than that of experience, one can appeal to this, partly that peoples themselves, and indeed among the most freedom-loving, have acknowledged their unskillfulness in giving themselves a constitution and commissioned a *Solon*, *Lycurgus* with it, which men moreover used a ruse in order to set aside the so-called will of the people and the declaration of this will on their constitution, - partly that *Moses* like *Louis XVIII* of his own accord gave the constitution and made not the will of the people but the divine or royal authority the ground of its validity. - With regard to Württemberg, however, the village mayor Reinhard of Obereßlingen cited above would have exhausted everything in his dictum: *If the Swabians have free will, nothing happens at all.* - As for the apprehension about despotic constitutions which might come out without consulting the will of the people, it may proceed from a well-founded distrust or from shallow worldly wisdom and fainthearted misjudgement of the true power of the spirit of the people and of the age; here it is not a matter of a hypothesis but of a determinate case. - As experience shows, so it is just as easy to see from the nature of the matter that no one can have less skill to make a constitution than what one may call the people, or than an assembly of its estates; even if one does not wish to consider that the existence of a people and of an assembly of estates already presupposes a constitution, an organic condition, an ordered life of the people.

The *third* course which the Württemberg estates of the realm adopted, namely to reject the royal constitution outright

[531] - *without examining it and without separating out what they could recognise and what not, and what they still missed* -, has probably been the clumsiest, the most improper, the most unpardonable. In doing so they at the same time assumed, conversely, the position towards the King of demanding of him that he should accept, unexamined and unconditionally, the constitution which they and the people thought they wanted, indeed that an act of accepting no longer belonged to him at all, but that he was already in and for himself bound to it. It matters little that they seemed to be free of the presumption of wanting to make their own constitution themselves or of having made it, since it was the old-Württemberg constitution which they opposed to the royal one; they thereby merely submitted to the authority of something which in and for itself could no longer *stand* nor *go*, and of which they afterwards declared, naively enough (XI, p. 282), that it was *quite impossible at present* for them to state it in its full extent, - and why so? because the *old archive of the estates was still being withheld* from them! - That the bookish scholar is stranded when he has lost the key to his library is in order; but when the estates of the realm find it impossible to state their constitution because they do not have the archive at their disposal, what *mouldy concept* of constitution does this presuppose? But it is stated in the same place yet more closely what the sources are from which “the content of the *fundamental laws* of the constitution must be enumerated and developed”; this is characteristic enough to be singled out, namely not merely “*from the Württemberg house and government ordinances, the recesses of the diets and committees, the testaments of the rulers*”,

“but also from the various individual law-books, e.g. *from the land law, the land ordinance, the so-called ordinances of all sorts, the ordinance on church and chest, the ordinance on marriage and matrimonial courts, the pulpit ordinance, the forest ordinance, the communal ordinance*” etc.

“From *innumerable (!) individual rescripts* and chiefly *from the many resolutions* which were issued in reply to complaints, petitions and wishes of the estates.”

“Many *important* propositions can be demonstrated only by the *combination of various sources* of Württemberg public law, many only by *induction*, many only by the *force of tradition* confirmed in the laws.”

In the same address, further forward, the concern is expressed that without presupposing the continuing binding force of this positive constitution one would be led into the *labyrinths of natural public law*. But can there be a worse labyrinth than that mass of sources just indicated? An advocate may well feel merry at having such an armoury, from which to draw consequences, combinations, inductions, analogies for his deductions in abundance; but how can an assembly of estates be afraid of reason, the source of so-called *natural public law*, and seek help and security against such a fear in delving into such a *paper labyrinth*! If the estates, on the one hand, expected the King to recognise in advance, as rights of the Württemberg subjects, their consequences, combinations, inductions etc., to be brought to light from such sources within a year and a day (it says in the same place that it would be an undertaking of several years), they wanted, on the other hand, to maintain that this was the *will of the people*, which could not *know* such an edifice of constitution, one which the estates themselves declared it impossible for them to state!

One might, moreover, still have taken the view that the estates had not really been so much in earnest with their demand for the past constitution, and that they had had only the understanding intention of obtaining the alteration of some points of the royal constitution, chiefly a more comprehensive development of the principles, while at the same time seeking an effective means for the attainment of this purpose. One may concede that they could not resort to any

[533] means which would have been of more external force, at least, than the awakening of the *magic formula*, as the *name* of the old-Württemberg constitution is also called by them. The so-called *unanimity* of the assembly on this we have seen. That *high* and *lower nobility* which still laid claim to rights that stood in contradiction with the interest and right of the people and of the state, which indeed posed it as problematic whether it already belonged to Württemberg at all, and spoke of conditions under which it alone would be pleased to be inclined to enter into a relation of subjection, - had to find the magic formula "*good old right*" entirely fitting for its claims. The so-called *New-Württembergers*, who could not at first see the remedy for the manifold oppression under which they sighed directly in the royal constitution, attached their opposition to the present condition to that title in the first confusion about the matter.

From all sides there poured in addresses and petitions from the towns and districts, deputations appeared which expressed the demand for the restoration of the constitution of the hereditary lands, and a large part of the sittings of the assembly was spent in the reading of the addresses. Worn out and discredited as the means of popular addresses has become, it was not disdained here; it was the easier to apply, the greater the influence of the class of scribes is among the people, of which there will be talk later; but the less content and authority could that means have in the eyes of the more discerning; it was rather suited to cast a shadow on the assembly.

- In any case it is in itself the place of an assembly of estates to be the mediating organ between prince and people; and under the prevailing external circumstances of the new disturbances in France, given the lack of understanding, common with all good will, of the so-called people, when

[534] it comes to speaking about general affairs, still more given the novelty of the situation, the lack of *concepts* among the people about a *constitution of the state*, since it had never had the thing, given the transition from its political nullity into a hitherto unknown share and influence in the whole of a state - it was all the more the position of the assembly of the estates of the realm to leave the people with its previous opinions out of play. - In the fifth sitting Count von Waldeck found it necessary, since according to reliable reports the people had been *disquieted* by the publication of the royal constitutional charter, to quiet it, and proposed as the means of doing this *without attracting notice* that the representatives should report to the people *that they had placed themselves at the head of its prejudices*. Who would call that a quieting of the people, when the assembly of the estates declares to it that in the assembly - in opposition to the King - it is to see the support of its disquiet! For the rest, however many petitions were read and however much the assembly of the estates prided itself on them, one sees again that they were very much neglected, and one does not recognise from the minutes by what the choice was determined to read one part, but, as it seems, not even to mention others and to note them in the minutes. Only a few examples: In a sitting of 20 Dec. 1815 (Section XVII, p. 49), a motion occurs to *note at least in the minutes a number of addresses that had come in, to accept them as read and to lay them among the files*. On 21 Feb. 1816 a petition from the town of Riedlingen of 12 April 1815 comes up for reading. On 5 April 1816 a representative asks to be allowed to hand over to a section of the assembly a petition already submitted on 11 June of the previous year; but under this date, on which there was no sitting, and also on 12 June, on which a sitting was held, no mention whatever is made of that petition. - Many other such data do not exactly show that the

[535] assembly of the estates had an *objective* respect for the petitions of the people, that is, insofar as they were not merely serviceable for the assembly's intentions.

As regards, moreover, the earnestness about the old constitution, so much emerges from what followed, that the assembly was not concerned merely with the *support* which it found in public opinion through that *magic formula*; by its *majority* it lastingly maintained its earnestness about that constitution and made it in particular the main point to demand that the *formal principle of right* be recognised. The spirit of *formalism* and of *particularity* has, as is well known, always made up the character and the misfortune of Germany in history; this spirit has shown itself here in all its strength. If one wishes to call it *Germanness*, nothing could have been *more German* than the disposition of the old-Württemberg deputies, the nobility included. If, however, one understood by *Germanness* something universal and rational in its concept - notwithstanding all diversity of territorial lordship -, it will be hard to find anything *more un-German* than that disposition.

The immediate consequence, however, of the position which the assembly of the estates gave itself by rejecting, setting aside, ignoring the royal constitution, was that it made itself incapable of an organic vital activity. It placed itself directly over against the government, did not form an opposition within a common ground, and put itself out of the relation of being able to undertake and bring about *effective work* on institutions of the state. When a New-Württemberg representative, Herr *Gleich* of Aalen, at last lost patience after the lapse of three months and vain waiting for something beneficial to appear, and reproached the assembly (Section VIII, p. 20 f.) among other things with occupying itself almost always only with side issues and losing sight of the

[536] main issue, this was declared to him to be quite false, for the assembly had in one sitting passed the *resolution* that every member be *called upon to prepare himself* for a draft of the constitutional charter! - As if every deputy should not already have brought his whole preparation with him, and as if such a resolution of the assembly, that every member should prepare himself, had been a work, and an answer when one asks after the three months' work of an assembly. - In any case, however, one saw before that on the following 26 October it occurred to the assembly that the statement of the *fundamental laws* of its constitution was impossible for it because it had not yet been able to use the archive of the estates.

Inactive, to be sure, the estates of the realm have not therefore been; on their diplomatic path they have transacted formal business enough. But since this is wholly confined within the conditioned limits of a merely positive standpoint, which even as positive no longer has any actuality, so, the more lively the interest becomes in the maintenance of formal right, the less does an independent rational content present itself, and in this exposition, which has already touched upon the most important points of view, the historical course, moreover known to the public, can be further cited only according to its chief moments.

To the first submission of the estates mentioned above, in which they had declared the rejection of the royal constitution in a *delicate* way, but actually in a way not open and frank but meant to be hidden and contorted, they were already two days afterwards simply referred by the King to the rights due to them by virtue of this constitution and reminded that the way was open to them therein, if they had individual wishes to put forward in this regard; the assurance was added that such wishes and petitions should find a favourable hearing

[537] as soon as the King obtained the conviction that they accord with the interest of the entire kingdom.

What more and what else could the King reply to their indistinct declaration? - The King demanded *matters* which they were to lay before him; in their reply of 23 March they remain standing at what is devoid of matter and merely formal. A more detailed draft of a submission, composed by Herr *Bolley*, in which the declaration is indeed made at the outset that the estates abstain from entering upon a *complete examination* of the new charter, but which nevertheless put forward *remarks* against many of its points, they held back; it was, however, to count as the document of their political confession of faith and as the account of the grounds of their conduct, and, *if it should be necessary*, to be laid in due time before the royal ministry of state (Section I, p. 67). Nothing would indeed have been more necessary than to lay before the ministry the grounds from which they could not accept the royal charter, but above all to enter upon the *complete examination*. - Nor are they *remarks* whose laying before the ministry could advance the matter; to remarks one makes *counter-remarks*. The so-called *diplomatic path*, which is introduced in such a manner and may lead to results as it will, otherwise also brings this with it, that the negotiating parties put forward *grounds* and *counter-grounds*. Besides that it is not suited to the relation of government to subjects - a relation into which the mediatised lords, to be sure, declared they had yet to enter - it is something quite other than what a chief activity of an assembly of estates ought to be: *examinations* and *discussions* within itself about its objects. - One may have the thought that if the ministers of state, as is contained in the royal charter § 26, had now begun to attend the sittings and had taken the floor, the proceedings would perhaps have been given, from the very outset,

[538] a different form. The counter-remarks, refutations, expositions of grounds could not have entered into the style of royal rescripts, could not have become essays against essays, but would have been the content of oral addresses by the ministers or councillors of state in the sittings of the estates. These could likewise have been led to examination, to developments and discussions in general, and, if possible, have been torn out of the mutism and paper proceedings designated above.

The submission of the estates of 22 March, by Count von Waldeck, repeated the contrived turn, neither open nor sensible, of omitting in its concluding petition the direct demand for the old constitution and of *presupposing* it. If such a turn could seem quite dignified and brave, to make nothing of the kind the object of a petition and to want to keep every appearance of doubtfulness at a distance, it could lead to nothing; the matter had after all to come to direct speech, only later. - The concluding petition therefore went, with subtle refinement, only to this, that the King might consent to the *extension of the constitution of the hereditary lands* to the whole kingdom, for which purpose a deduction of the legal claims of the incorporated parts of the country to the constitution of the hereditary lands was added. - Further, after the royal resolution had demanded of the estates the statement of their further wishes, they turned this around and wanted to push it on to the government to begin with such a statement. In the entanglements of private affairs, in the practice of advocates, it may belong among the prudences to keep oneself closed, not to speak first, to wait for the other to come, to push it on to him to come out first with his claims and means; one retains the advantage of being able to proceed by attack without giving anything away and exposing oneself, and the like. But an assembly of estates must least of all take its prudence from the practice of advocates. - Instead of giving *their* wishes about

[539] articles of the royal charter, they added the second subtle petition - for the *statement of those modifications* which the present circumstances demand, for the making of some common agreement, - as if there were nothing more to be done. - If one did not want to take such an assurance and such a petition for mockery, then it must strike one as an incomprehensible lack of understanding, into which no ray of reflection on the position of the opposite party falls and which quite comfortably continues on its way without any thought that, in order to bring about an agreement, regard is in fact also necessary for the view and the will of him with whom it is to come about and who is even the prince and government.

The ministry thereupon declared on 4 April that the King had resolved to postpone the detailed answer to this submission until the return of the Crown Prince and the consultation to be held with him. Nevertheless on 17 April the King caused a further answer to be sent to the estates, at the time when he also had them called upon to co-operate in raising the extraordinary needs of the war. In it the point of view from which the royal constitution had proceeded is placed before their eyes, that “namely, given the independence of the state from any superior, the relations between the head of state and the estates have been determined after the example of other *independent states*, as was deemed necessary for the founding of a lasting condition, for the safeguarding of the *rights of the people* and for the *firmness and energy of the government of the state*, - regardless of whether the rights of the estates of the realm under the former *imperial territorial constitution* of the *duchy* of Württemberg were more extensive or more restricted; as indeed in the new constitution they are *greater* than in the one formerly existing in *several essential points*, namely with regard to *independence* in the *proceedings of the estates*, in the *share in legislation*,

[540] even in *taxation*, which, in everything that the relations of the Empire and of the circles brought with them, was not dependent on the consent of the estates”.

Further the King declares that, in order to achieve a common understanding about the applicability of the proposals, he will have *oral negotiations through plenipotentiaries from both sides* opened.

The estates, as stated above, made their co-operation in raising the extraordinary needs dependent on the granting of their demands. The immediate means they saw in a state loan; to obtain one on advantageous terms, the guarantee of the estates of the realm would without doubt have been of importance. Here was the moment, with the words they had in their mouths, to be ready to sacrifice *goods and blood* for the fatherland, to prove the *truth* of their good will, - a proof which can be furnished only *by deed*. - This active proof could at the same time have become an introduction to an understanding in general and, more closely, to the establishment of a common fund for the redemption of debts. But they did not offer this guarantee; rather, on 18 April they sent to the King a couple of their essays, which they had in stock, repeated their monotonous representations, and then declared themselves ready, for their part, to proceed to the election of plenipotentiaries.

On 24 April the assembly appointed a committee of 25 members, who were to *prepare* the negotiations, and four commissioners for negotiation with the four councillors of state appointed to that end by the King, who, as far as one can recall, *all seem to have been old-Württembergers*. Now a closer preliminary seemed to have set in, which could give hope of leading to the *matter*. It showed itself at once that the committee had understood by the preparation assigned to it the *direction* of the negotiations and the instructing of the commissioners of the estates,

[541] and that it had begun its activity in this sense and had de facto taken over the negotiations entirely, to the exclusion of the assembly itself. On the remark of a member in the assembly on 28 April that the relations of the committee should be stated more determinately, Herr Amtsschreiber Bolley, one of the most active members of the committee, *assured* it that the committee would *take no dangerous steps* and would communicate with the assembly of the estates *where it was necessary*; in negotiations certain things had to be kept *secret*. On this assurance the assembly formally transferred to the committee the direction of the negotiations *salva ratificatione* of the assembly, as well as the instructing of the commissioners. - The proper activity of the assembly, the business in relation to the matter of the constitution, had hereby passed over to the committee. It is now mentioned that meetings of the commissioners of the estates with the royal ones have taken place; from 28 April, when a report on these proceedings, though not made known in print, and from 2 May, when a note of the committee to the commissioners, likewise not printed, is read, one learns nothing more of this business of negotiation until 29 May, when Dr. Cotta (Section VI, p. 79), in the name of the commissioners of the estates, lays before the assembly a *royal resolution*, communicated to them on the same day, concerning *six objects* of the constitution. Only from the speech, remarkable in many respects, of Herr *Gleich* of Aalen of 23 June (Section VII, p. 81) does one learn something closer of the spirit and conduct of the committee. One sees from it, namely, that it had not engaged in any development of and work on the matter, but had straightaway set up *six points*, which, as Herr Gleich rightly remarks, were taken partly from the old Württemberg constitution, partly from the royal constitution, fragments of a constitution, as preliminary articles. - As the

[542] *delicate*, but rather absurd, intention for such a procedure it is stated that it was to open to the court a *fitting* way of acceding with *good grace* to the wishes of the assembly. - Equally remarkable is it to see from the speech cited that the committee had made a *secret* of these six points even from the assembly of the estates itself. It says in the same place that, after it became known that several members wanted to leave the diet out of dissatisfaction over this, a *kind of confidential disclosure* was made to them. - Above, the character of mutism was noted which the assembly showed from the very beginning; but now it was put by its committee, in addition, into the condition not of deafness - for only he is deaf who does not hear when there is speaking in his presence - but into the condition of not hearing because nothing was being spoken before it. - Here one loses altogether every idea one may have of the vocation and the labours of an assembly of estates. - It says in the same speech, as also emerges from the minutes, that the indispensable and sole thing that should have been done, "the discussion of these six articles in the assembly of the estates, was never and nevermore thought of". - Thus the assembly had still not come to a *material* in its proceedings and to a substantial activity on the constitution.

The secret of the *six preliminary articles* of the committee, which now constitute the turning point, one learns to know only from an essay of the estates of 26 June (Section VIII, p. 89). Since they concern real materials, they shall be briefly cited here, together with the statement of what the King's resolution of 29 May concedes on them and what is of the greatest importance.

The *first* thing which the commissioners demanded they called, very clumsily, *self-taxation*, with the more precise determination

[543] that a prior laying before them of the needs of the state and of a computation of the revenues of the exchequer, inspection of the accounts of these, examination of the actual employment of the moneys granted, and an administration of the moneys of the land by the estates should be bound up with it. - The King withdrew the restriction of the concurrence of the estates made in his constitution and conceded that not only the increase but the direct and indirect taxes in general should be granted by the estates; only from the year 1815 to 1818 were the present ones to remain in force. A share in the *levying*, on the other hand, as also a *fund* under their direction, he did not concede to the estates; but the most exact inspection of all the revenues and expenditures of the state and a complete control with regard to their employment, with the exception of the revenues from the royal patrimonial and domanial property, in connection with which the King declared that he was not opposed to a civil list, to be founded indeed on the domanial property. Further, an authority for the payment of debts is to be set up, with the co-opting of deputies of the estates in equal number with royal deputies. - No remark is needed on the liberality of these royal concessions. That in a fief of the Empire, but not in a state, estates can have the administration of the exchequer, has been discussed above. That the chambers in France and the Parliament in England have no such administration is well known, - as also that in the former country the chamber of deputies appoints deputies from among its members to the sinking fund. The expression *moneys of the land*, which the commissioners of the estates use instead of *moneys of the state*, served to designate the right which the *land* has, since the moneys are its own, also to administer them itself. - The earlier habit of the fief of the Empire, of setting government and land in opposition, could not find its account in the expression *state*, in which the old sense of that opposition falls away and

[544] moneys of private persons, as they become taxes, public moneys, belong only to the state.

The *second* demand was the *restoration of the church property*. The King conceded it entirely, only the former separate administration he refused.

The *third article* was a form of representation in which *all classes of the subjects* were to be represented in equal proportion. - The very democratic form of representation has already been spoken of at greater length above. To this wholly indeterminate, concealed demand the King replied that he awaited further proposals on it; this alone he declared, that he would not accede to a special representation of the *nobility*, at which it seemed here perhaps to be aimed. - Herr Gleich still says on 23 June about this point (Section VII, p. 130): "What conception and intention the commissioners had with it is *not easy to guess*. For that reason they should in fairness also have *declared themselves* on it *in the assembly*." So on 23 June the sense of this article had still remained a secret.

The *fourth article* was one which might lie very close to the heart of those members of the estates who could miss the well-known old committee system: *uninterrupted exercise of the rights of the estates through a standing committee*. - The King replied that the time set for the committee in the royal charter at four weeks for its annual sitting might very well be prolonged and the convocation repeated, if the business required it. For the rest he drew the attention of the estates to the *increase of costs*. - This latter circumstance was indeed of great significance with the old committees; but it could easily have been said that it might rather become a tacit ground *for* the prolongation, even uninterrupted duration, of the sittings, even if the business did not require it, than *against* it. In relation to the old committees this thought might

[545] be superfluous, insofar as there result, in the pamphlet cited above on p. 495, *The Administration of the Württemberg Exchequer of the Land*, examples that the narrower committee, which had the administration of the exchequer and the right to convoke the larger committee, decreed and had paid to the latter *monetary compensations* for the fact that it had *not* convoked it; it knew, then, how to produce an *increase of costs* without there being any business and without any sittings being held. – Only a short while ago it became known to the public that the assembly of the estates whose proceedings are considered here cost the state 260,000 fl. In the printed minutes before us it is indeed mentioned a few times that reports were made on the salaries of the members of the estates and on other expenses, and that a committee was active on this; but in the printed minutes it remains always at these notices alone, without the content of the reports or resolutions being given, without sums being named anywhere. Precisely this object an assembly of estates had least of all to treat with secrecy, but should rather have given it publicity with all openness, once it accepted payment in money for its labours or at least for its being together. This article of the royal constitution, much as it ignored the others, it had at least accepted *utiliter*. – It is in itself in a high degree objectionable when members of the estates of the realm receive salaries or daily allowances; it is a circumstance of the highest importance, it alters something essential in the character and position of a representation of the people; it belongs also among those by which preponderance is given of itself to property in the elections, besides that it is otherwise most closely connected with the honour of such an assembly. Estates of the realm, in the case that they are salaried, can never escape the suspicion or reproach that, if not for all, yet for many or some members, such a receipt is a

[546] consideration. In the proceedings of this assembly of the estates the feeling against the drawing of a salary, and any stirring of this as of other important objects, is not mentioned at all, - as if it went without saying that the deputies are salaried, at least, as occurs once, that they receive *reimbursement of their costs*. - That reproach, if the reporter rightly recalls, did not fail to appear publicly either. - But the most fanciful demand which an assembly of estates could make was that it should be able to appoint yet another committee with special salaries and with pensions and, to crown it, in order to legitimate in advance the incapacity and laziness of the committee members, should be allowed to add and bestow, as formerly, *posts of counsel*.

It helps nothing that the leaders of the estates did not lay claim, for the committee, of which they might appear as the most qualified members, to the whole condition and right of the former *secret chest*. With the salaries of committee members, and above all with the granting of pensions to those who, as it says in the *draft* of the Württemberg constitution to be renewed, “have given themselves up *wholly to the service of the fatherland* and received the appointment to *live in Stuttgart* (what devotion!), but who at the renewal of the committee, to take place *every three years*, are not appointed anew”, to whom “*on account of the 'sacrifice' made to the fatherland* an annual compensation was to be paid until their reappointment”, - hereby a condition would be brought back, the abolition of which, though perhaps not the committee members themselves or those who could have the prospect of being elected to it, yet surely the estates and above all the people had to regard as the greatest step to a free and popular constitution and as the greatest benefit that more recent times have brought. - Of equal or even greater influence is the circumstance that through such a standing committee the most important thing, the

[547] assembly of the estates of the realm itself, becomes more superfluous. Legal provisions against it are, on the other hand, something insufficient when the matter itself brings it so with it. Even to abstract from the spirit which must form in such a well-salaried committee, the history of the old Württemberg estates of the realm has furnished sufficient experience on this. It is known how rare assemblies of estates have been. What the present estates seemed to regard as their palladium, the uninterrupted duration of committees, they would have had to regard, with more reflection or mere looking back at that experience lying nearest to them, rather as an arrangement which laid the most dangerous snare for their independence and their true existence, namely as a general assembly.

The *fifth* preliminary article demanded is the share of the estates in *legislation* since 1806, namely revision of the ordinances issued since 1806 by a joint deputation of the prince and of the land. - The King reminded the estates of the means which they *already* have for this in the right of petition. - Besides, however, in the fact that that share was demanded only in regard to the ordinances issued *since* 1806, when the old estates of the realm were abolished, one can see only either blind prejudice for what came earlier and blind animosity against what came later from the King, or at least the craving to show belief in the excellence of the former and dissatisfaction with the latter. Further, the revision, to be carried out merely by a *deputation* of royal councillors and members of the estates - for which the favourite name *of the prince* and *of the land* comes to the fore again -, is, oddly and informally, put forward, whereas the concurrence of the whole assembly of the estates belongs to the business of legislation; for the preparatory work on it, as for all other preparatory work, it had the power [to] assign them to committees.

The *sixth* article is *freedom of movement* in the old sense of the word. - The King conceded it, even before the lapse of a year after the declaration of intent of one who wished to emigrate, as had formerly been determined, even in the case of serfdom, without having to buy oneself out of it. But since emigration at the same time concerns a relation to other states, he insisted on the principle of reciprocity with regard to the tax on removal of property.

The negotiating commissioners of the estates had laid these articles before him with the peremptory declaration that without their recognition by treaty no happy result of the negotiations was to be hoped for, and the co-operation of the estates, even in the present distress, was *absolutely impossible*; that they must therefore request that the King should *now already*, and *before further action was taken*, give a satisfactory declaration, and indeed not only for the quieting of the assembly but also of the public at home and even *abroad*. - The King, who overlooked even the glaring feature that the assembly made its co-operation in the exertions of the state then required dependent on the submission of the King to its will, to take place *at once* and *before further action was taken*, as well as such a form of negotiation, to begin by laying down disconnected, indeterminate, in part meagre preliminary articles, and who met the estates with great compliance in respect of the material side, added, for the rest, that his resolutions rest on *unalterable* principles, that on this basis the negotiation with the deputies of the estates of the realm should be continued and an attempt made to bring about an agreement.

The estates, however, did not continue these negotiations. Their hitherto customary way of remaining standing at the demand for what is merely formal could have appeared justified by the important concessions which they had obtained from the King on this path, if they had now entered into the

[549] matter. Even if the negotiating committee had still wanted to persist in ignoring the royal constitution, by which a part of its articles was in part already settled, in part also better carried out and developed, it was now surely time for the assembly to deliberate, to bring the particular to consciousness and to declare what it *found acceptable and what not*. From that there would have resulted, at least, *preliminary articles*, and indeed of an *agreement*, not of a submission of the King. – But as little as the six articles were previously subjected to a discussion of the assembly, before they were laid down for preliminary unconditional acceptance, so little did this happen after the royal declaration on those articles and on the content of this declaration had been given. Instead, three or four members again read essays, namely in the form of *projects of an answer* to the royal resolution. The fixed idea of the dry principle of restoration of the old constitution grounded the naivety that the assembly always found itself outside the matter and even now busied itself not with it, but only with its own *diplomatic* manner of how it should be *answered*. – Dr. Cotta had read in the committee on 1 May an essay concerning the matter, which especially dealt with the establishment of a fund of the estates, then was drawn before the assembly and had as its consequence an essay by Dr. Weishaar (sitting of 27 May, Section VI, p. 38); later, on 23 June, he had another follow, in which the thought was developed that such a fund, like the other good of the old constitution in general, should not be extended to the elements encroaching upon the rights of rulers, and that fund should rather be restricted to what the credit of the state and the dignity of the estates permit. However well these thoughts, to which he also later returned, were suited to thorough deliberation *before* a resolution on the royal declaration, yet

[550] the consequences were only these, that three weeks afterwards, and at the same time long after the answer to the royal resolutions had been effected, Herr Amtsschreiber Bolley, and again eight days later Dr. Weishaar, read essays against the ideas of Dr. Cotta. To a vote on the matter itself it did not come at all. - Of what Herr Bolley, as he called it, *wrote down* and the reading of which, as the minutes (Section IX, p. 114) state, was received by the assembly with lively *thanks*, this may be singled out, that he took account in it of the well-known work of the Minister of State Herr von Wangenheim, *Idee der Staatsverfassung*, and (Section IX, p. 124) does him the justice "that the rights of the people, namely of the Württembergers, have found in the noble author so warm a defender". - This too may still be cited from it, that the author, in relation to a disposition by the estates of the realm over the tax exchequer, assures (*ibid.*, p. 135), [that,] "if high purposes of the state in extraordinary cases demand the speedy procuring of moneys, the estates, *having the most important in view*, *will certainly* never hesitate to support the sovereign to the best of their ability". - This *certainly* is very naive; in such an *assurance* the guarantee was supposed to lie for the state that it is not dangerous to it to constitute *two* independent governmental powers. This *certainly* is all the more naive since one could ask what purpose of the state could be more important, what case more extraordinary, than the moment of Napoleon's reappearance in France? How, only just then, a few weeks before Herr Bolley read his essay and this assurance of his, the Württemberg assembly of the estates had supported its sovereign to the best of its ability and had attached itself to the cause of Germany and of Europe, we have seen.

A more comprehensive occasion to enter upon the articles at hand was given to the assembly by the courageous, eloquent address of Herr *Gleich* of Aalen of 23 June, already cited several times, excellent in thought

[551] and spirit. He declares that the estates should be concerned not with the *old-Württemberg* but with a *good* constitution, not with an empty formal right but with the matter, and takes up, reasonably, not some disconnected fragments but the essential principles on which it depends. The assembly found itself surprised at a tone so foreign to its fixed ideas as well as to its eternal self-praise and to the praise of all the newspapers. That Herr Gleich's courage fared ill at the hands of the assembly has already been cited above; this voice died away in the wilderness, and it was demonstrated to him by half a dozen essays that his motion went to "enter upon the royal resolution and not, as it were, to throw away the King's offers, in part acceptable". - Herr Gleich, however, vanishes from now on from the assembly, without any explanation of his departure emerging from the minutes, and later another representative of Aalen appears. It belongs, however, in general to the informalities of the assembly that members lay down their place as deputies and others step forward in their place, without its being clear from what formal authorisation the one and the other happens. - With regard to Herr Gleich one reads only after a year and a day, in a sitting, the obscure utterance of a member cited, who reminded another deputy, who deviated from the opinion of the majority, by way of warning of the fate which Herr Gleich had had.

With the motion of Herr Gleich the assembly rejected the position to which the royal resolutions had opened the way for it, the position of declaring an agreement which existed on very essential points and thereby of laying a firm basis for further negotiation. It did not discuss the materials themselves, nor which of the royal resolutions were acceptable in their content and

[552] which not, but only such things as which essays it should attach to its answer, what title it wished to give them, and such formalities, in a few sittings. On 26 June, four weeks after receipt of the royal resolution, it finally had its reply ready (Section VIII, p. 58 ff.). Nor did this consist in a counter-instruction to its negotiating plenipotentiaries, but in an address to the King. The assembly thus fell back into the old path of its libelling, which had hitherto led to nothing and in whose place, for that reason, the path of oral negotiations with royal commissioners was to have stepped.

The address itself, without touching upon the compliance of the King, is filled only with the expressions of *complete disappointment* of their hopes, of their *nameless pain* and *consternation*, of their impossibly conscientious *conviction*, with self-praise of their love of truth, to which every impure motive, every selfish intention is foreign, of the testimony of their conscience before God, before whose judgement-seat they will one day be summoned, and such pathos. With regard to the matter the answer was quite simply and naively this, *that the royal resolution cannot be reconciled with the principle of the estates*. The pathetic conclusion of the address is that they beg, indeed adjure, the King, by God, by all that is holy, that is venerable, by the happiness of his own Most Serene Family, that he may no longer refuse the restoration of the earlier *condition of right*. Herr Gleich had mingled no such empty pathos into his address, but had developed so much the more reason in it, which, however, did not produce the desired effect; perhaps he would have got further with that kind of pathos, yet at most he would only have averted the insinuation of impure intentions. - Otherwise the usual grounds from positive public law and from the contractual relation are adduced, and in particular it is impressed upon the King that

[553] he himself, like the earlier rulers, at his accession to the government *solemnly vowed and swore* the maintenance of the constitution. They add that they have examined most conscientiously whether a change had occurred which according to principles of right could annul these obligations; they could find no such *ground in right*. That they ought to have searched still more thoroughly, they should have let themselves be called upon to do precisely by the fact that otherwise they saw themselves in the warrant to raise against their prince the accusation of *perjury* against his whole people, - a warrant and an act from which they ought to have recoiled.

To the address there was appended, besides two essays, chiefly a third enclosure, an essay or rather a book in small print of 162 pages (Section VIII, pp. 91-252), - namely the so-called statement of the *grievances of the land*. On this book the members had worked for many weeks and had dragged together from all sides all kinds of grievances. One must read in the proceedings themselves how with this labour the estates seemed to have accomplished the most important work, fulfilled their most sacred duty, justified their whole conduct towards the King most irrefutably. It is impossible, above all in this notice, to enter upon the content of this glaring picture of oppression and complaints. Besides the examination of the factual assertions, it might seem necessary to distinguish what would be real and what supposed grievances; for one sees at the first glance that a multitude of the complaints rests on the authors' *judgement* about the utility or harmfulness of institutions of the state. Then one would have to distinguish what of the burden of the levies, insofar as it is well founded, would fall to the charge of the government and what to the necessity and adversity of the times. One has surely seen in all German lands, even leaving aside the manifold unreason of complaining

[554] and being dissatisfied, this confusion, of ascribing to the will of the government what was a consequence of the monstrous relations and events of the last 25 years. One sees in this collection of grievances, in this respect, likewise that the estates lacked knowledge of the needs of the state and of the situation of the exchequer, and that the complaints about the impositions are raised without any comparison with the needs of the state. In special respect, however, it would have to be investigated whether the abolition of the old-Württemberg constitution was the sole ground of the well-founded grievances, for this was the foremost thought that was to be proved by it or rather not proved but straight-way presupposed; still less is it shown that the royal constitution, with the further provisions just conceded, would not be capable of remedying the grievances, indeed that they would rather have to continue to exist under it. This latter point of view, whose development is not thought of at all, would have been the sole nerve of the remonstrance which was to be supported by this mass of grievances.

Such investigations, which might at first show themselves to be justified, become altogether superfluous, however, since this work, which seemed so weighty, was afflicted from the outset with a fundamental defect and was bound to remain without important consequences, indeed was even meant to remain without any. - Here only this little may be remarked, that the country's *gravamina*, the *Cahiers des doléances*, have been a well-known article in the business of the former estates of the Empire. Equally well known is how little was ever accomplished by them, how every diet of the land or of the Empire mostly found the mass of grievances of its predecessor still unsettled and sought to swell it further with fresh material, so that this *moles* itself, together with the habit, grown firm on the one side, of the estates of the realm or parliaments, of indulging, in accordance with duty and conscience, in such a prolix exposition, drawing in everything possible, of

[555] complaints and grievances, and on the other side the habit of the governments of receiving along with the grants of their estates also such a *moles* sent over to them, has so dulled and hardened both parties against it that the drawing up and receiving of these masses of writing sank to the significance of a formality. The reviewer recalls having read, cited somewhere, that when, in the course of the legal proceedings there between him and his estates of the realm in the year 1768, the collection of grievances of the latter was served on the commissaries of Duke *Karl* of Württemberg by the Imperial Aulic Council in Vienna, those commissaries replied, roughly, that the Aulic Council should not be astonished at such a mass, since for several hundred years the authors of the *gravamina* had vied with their predecessors in surpassing and outdoing them in description, and that, if one were willing to give credence to such depicting, the land would already have had to be utterly ruined for more than a hundred years.

The Württemberg assembly of estates, to which the royal constitution had opened a quite different path, the path not merely of lodging grievances but of working at the removal of the defects, preferred, since it had run fast aground in its principle of right, of an old-constitutional mode of procedure, to tread merely the path pointed out, the old highway, and to carry together the mass of querelles. For it would have held it against its conscience itself to contribute to a remedy, because by active work it would have believed itself in fact to be recognising the royal constitution. It is also an easier labour to drag together such a mass of grievances than to think out and work out the constitutional and legislative dispositions through which alone *that* is thoroughly remedied which can be remedied; it is easier, in the former way, merely to puff oneself up into a hollow feeling of fulfilment of duty and a false satisfaction of conscience than, in the second way, to acquire a

[556] merit which is more laborious, but at the same time more modest and more real. A burden such as that which had arisen from the excessive preserving of game and the hunts, and which seems to have been hard enough, is well qualified to be disposed of by mere complaining; for to remedy it nothing further is needed than a royal command to shoot the game dead; - and it is clear from the proceedings that the king, upon the first representations of the estates about it, as early as March (II. Div., p. 57), had given orders to put a stop to this evil, "*the settlement of which depended in the first instance on him*"; when the estates later had doubts about the sufficient effectiveness of these orders, they rightly renewed their representations. But since they also recounted everything else that seemed to them wrong and harmful in the arrangement and housekeeping of the state in *one* line with those evils, and likewise let it rest with lamenting and complaining, it looked as if they imagined the remedy of these evils also in such a way that the king had only to give the command *to shoot them away*.

All merit, then, cannot perhaps be denied to that bringing together of infirmities and abuses; but it only makes the lack of the second merit, of contributing *actually* to a remedy through considered proposals for remedial laws, all the more striking. Indeed, in a preliminary session on the documents mentioned - of 26 June (Div. VIII, p. 8) - there is actually put forward the fine scruple that the ministry *might engage* with the paper of grievances, - that is, it might divert from the *main matter*, i.e. the restoration of the old Württemberg constitution, to that paper. Count von Waldek had therefore, together with this doubt, moved for a *turn of phrase* in the address by which one could *safeguard* oneself against the engaging. This turn of phrase and safeguard Herr Bolley then indicated he had worked in as follows, "that the estates will not allow themselves to be disturbed by *negotiations*"

[557] over individual grievances in the attainment of their higher purpose, their sole concern, but *nevertheless* have to fulfil a *sacred* duty by the presentation of the grievances”. - If it was to be by *negotiations* that the grievances were to be dealt with, these would indeed have furnished material for years-long or rather endless negotiations, since there was no longer any *Aulic Council* present for their conclusion. But if the estates wished to engage neither in legislative labours nor in so-called negotiations, hence not to engage at all, to what end that *ballast* of grievances? - Was it to be left to the ministry to remedy them *in its own way*? - In truth this ballast served for nothing further than that the estates, as they call it, had fulfilled a *sacred* duty; the *more sacred*, but to be sure *more arduous* duty, of making through legislative labours the introduction of a remedy, did not come up for discussion. On 21 July (X. Div., p. 14) the king gave the only possible reply, that he must be put in a position by the reports of his ministries to give his decision upon the grievances presented.

Among the multitude of grievances, however, one touches in passing upon what was called the *scribe nuisance*. Through the untiring reminders of Herr von Forstner this subject has been lifted out of “the melancholy *litany* of grievances” and brought to a fuller illumination, which acquaints the public with an *institution* quite peculiar to Württemberg, the *institution of scribedom*, and opens up a condition of legal and moral as well as intellectual stagnation which, among other things, gives information about an important moment, the interest in the *good old right*, and is to be considered more closely on account of its far-reaching influence.

As early as 15 May Herr von Forstner put forward the influence which

[558] the so-called scribes have upon the administration of the state as *a general scourge of the land*, and indeed he declared that it is the former Württemberg *estates* constitution in whose innermost part this evil is firmly rooted, which grants the scribes “a wide field for *arbitrary will, oppression and fleecing*” (Div. V, p. 58). A committee was thereupon appointed for the drawing up of an opinion with proposals for the improvement of the institution. When in the course of six weeks this subject did not come up for discussion, Herr von Forstner repeated his motion on 28 June; he remarked on that occasion that, even if the nuisance is an abomination to many a respectable principal of scribes, such a man cannot prevent it and can only wish for a reform in silence, because he does not dare *to touch the sanctuary of the old constitution*, knowing that this evil is deeply grounded in it and most intimately interwoven with it. He adds that the Württemberger will *never* (that is, even after the restoration of the old constitution, - on the contrary) feel relieved in his fate so long as this evil is not removed; that it is unbearable and more than sufficient *to drive the common man to despair*. He adduces as fact and from irrefutable testimonies that this evil has at all times brought about the so frequent emigrations of the Old Württembergers abroad - emigrations which took place both in the *greatest bloom* of the former *estates* constitution and under the reign of the most diverse Württemberg rulers. *What else could move [them]*, he further exclaims, *to it than the constitution?* What expressed itself in it so unbearably? What brought them to despair *under* this constitution? Nothing other than the *oppression of the estate of scribes*. And it was the constitution which entitled this estate to harass the subject, etc. - On a further renewal of his motion (Div. XVI, p. 84) he cites from the opinion of a former Württemberg president of the government, *von Gemmingen*,

[559] a passage in which it is said that “Württemberg has the sad advantage over other countries of nourishing a race of men of its own, which in the rest of Germany has no longer been known since the times of Dr. Faust, - the scribes. This breed is”, it goes on, “the more burdensome to the industrious part of the people as it is equally shameless and base, on a favourable occasion to lay claim to the first offices of the state or, on an unfavourable one, to deprive the last class of the people of its nourishment, in all cases always to live from another’s labour”. - In a most remarkable, detailed petition of the district office of *Horb* (XIX. Div., p. 26 ff.) one reads that what is drawn annually in scribe earnings amounts on average to *more than one*, indeed in further statements drawn from the records one reads that it amounts to *six to seven annual taxes*.

Such a presentation was now indeed very much in contrast with the tone of the assembly, which always spoke of the three-hundred-year happiness of Württemberg under and through its former assembly of estates, and with the assurance that its restoration was the quite simple remedy for the grievances just brought together, the total mass of which must rather seem to be outweighed by this single scourge of the land. One may find that presentation still more contrasting with the zeal of the assembly for the *old right*, of whose members a part themselves, and among them such coryphaei as Herr Bolley, were *principals* in the scribe dynasty, while most of the other deputies, by their station, had brothers, sons or other relatives in this class, or could have for their sons and relatives the right to a share in the advantages of this “scourge of the land”. The assembly had nevertheless entered upon this subject and had appointed a committee for it, as stated. But one will be astonished, or, if one likes, one will *not* be astonished, when one sees the dilatoriness with which

[560] this subject was treated. Even upon the second motion of Herr von Forstner there followed only a summons to the committee to hasten its work. After the assembly met again on 16 October, following the adjournment of 27 July, nothing further was heard of this matter; Herr von Forstner did not desist, and on 5 December revived the subject; other deputies of New Württemberg joined their voices.

If a petition of two official scribes, against one of whom very urgent complaints (Div. XIX, p. 27) came in immediately afterwards, begs the assembly for an improvement of the provision for this estate, which, as they assure, through its institution has had *for centuries already* the *most beneficent* influence upon the state and its members *before other countries* (Div. XVIII, p. 27), - then other petitions, coming in in ever greater number, many of which remained unprinted, and indeed as the general voice of New Württemberg (Div. XVIII, p. 95 ff.), declared on the contrary that, when there is talk of grievances and oppressions of the land, this evil must be named first of all, - they added the evidence which sufficiently confirmed this, "that the assembly might be concerned with arrangements whereby the estate of scribes would no longer need to ponder day and night *how to hold the citizen to ransom* and to found its rise on the ruin of the subject". In all these petitions the most glaring facts are adduced and the strongest expressions used against this oppression.

About the time when these pleas for help against this sucking dry, cheating and ransoming came in, the pursuit of remonstrances against a royal rescript of tax enforcement of the middle of January 1816, concerning the annual tax of 1815/16, was a main occupation of the assembly of estates. The complaints about the unbearable scourge of the land, driving to despair, and the ransoming by

[561] scribedom, and the zeal of the estates of the realm for a mitigation of the levies to the state, run parallel to one another; so that the juxtaposition results as if the collection of the taxes for the purpose of the state would become an obstacle to scribedom in collecting the annual taxes which it imposed on the subjects.

On 24 April 1816, when for nearly *a year* nothing had yet been done in this matter, Herr von Forstner once more renewed his reminder of it to the assembly in a paper (not printed). At last, after *more than a year* (in which the assembly had needed only a few weeks for the dragging together of its grievances extending to all branches of the service of the state), the actual report of the committee appointed for the scribe nuisance and of the rapporteur charged with it, in which the compilation of these grievances had been promised, has *not at all* come about or come to light (XXII. Div., p. 7, XXV. Div. App., p. 54). What has appeared is an opinion of the consultant *Griesinger*, which is separately printed as an appendix to the 25th division on 192 pages. This was read on, from 11 June, in several sessions *piecemeal, as occasion offered*, until 15 July. Thereafter, apart from a remark by Dr. *Weishaar* on 6 August against a motion made in the preceding session, to undertake a reform of the scribe system in earnest, of which motion, however, one finds *nothing* in the minutes of the previous session, and [apart from] a few other quite isolated remarks, nothing more was done by the assembly in this important matter up to shortly before its close.

The lengthy opinion of Herr Consultant *Griesinger* states at the very beginning that the author refrains from sketching the sad picture of all “the crying and almost incredible facts which have accumulated in the petitions and papers received by the estates

[562] on the institution of scribedom, because another member has undertaken this work” – a work which, as said, has not been brought to the light of day. But that opinion, together with the few printed petitions, still contains enough for the truly “extraordinary and almost incredible” nature of this so renowned Württemberg institution and its relation to the estates constitution to emerge from it more closely. Since the author proceeds at first historically, he comes, at the office of the court scribes, because it is very old, to speak of the *old* Württemberg *courts* and to give his view and judgement of them, of which the reviewer cannot refrain from singling out something beforehand, before he comes to scribedom itself. The author cites the following from Chancellor *Nauclerus*⁵⁾, who lived at the end of the 15th century, *Chronogr. gener.*, on the constitution of these *courts*:

5) *Editors*: Johannes Nauclerus, 1430(?)–1510, chronicler, later chancellor

“In singulis urbibus, oppidis et villis duodecim viri, *vitae integritate ac honestate praecipui*, eliguntur in iudices, nullo habito respectu, *an sciant literas, nec non*, qui munus iudicum necessario subeunt, licet *remunerationem* seu *mercedem nullam* habeant, propter *honorem*. Sed *pro bono communi*, suis posthabitis negotiis, statutis diebus iudiciis intendunt, *iurantque* singuli, se *facturos* secundum *quod eis visum fuerit iustius ac melius*, et praesente magistratu loci causas audiunt, partibusque ad satietatem auditis sententiam dicunt, *non ut leges censent* (namely, as it says previously –leges imperatorum), quorum nullam notitiam habent, sed prouti *ratio et consuetudo iudiciorum* dictat.”⁶⁾ – But

6) *Editors*: “In individual towns, market towns and villages twelve men, distinguished by blameless conduct of life and respectability, are chosen as judges, without regard to their station and regardless of whether they are able to write or not, who must take up the office of judge, solely for the sake of the honour and without being permitted to receive any wage or recompense. But on the court days fixed, in the interest of the common good and setting aside all their business, they apply themselves and swear individually that they will act according to what appears to them the more just and better, and have the cases presented to them in the presence of the local magistracy and, when they have heard the parties sufficiently, pronounce their verdict – not according to the [imperial] laws, of which they have no knowledge whatever, but according to the reason and custom of the judges.” (Nauclerus’s work cited by Hegel could not be identified.)

[563] do *ratio* and *consuetudo iudiciorum*, the customary right, the *coutumes*, contain no laws? - The introduction of the foreign rights brought learned consultants also into the courts, and this practice completed the reduction of those courts, consisting of men of *equal standing*, of distinguished *probity*, who gave judgement not for *money* but for *the honour*, to that nullity which finally made their abolition even appear necessary.

That fine presentation of Naucerus, however, the author calls a *depiction*, made in the most vivid colours, of the *ignorance* of the Württemberg *courts* of that time, and goes on on his own account: "In courts where judges sat such as have just been described, to whom then also the *many* (many indeed!) *reasonable* extensions and restrictions of the laws were wholly unknown, the multitude of which nowadays puts *all non-jurists*" (as the members of the jury courts in England and France still are, - an institution which in these countries is regarded as the palladium of freedom) "in no position to decide entangled legal disputes - in such courts the main business of the court scribes could consist only in writing down the *foolish* and *insipid judgements of ignorant judges of a barbarous age*." - One sees that from such views of a juristic member of a German assembly of estates the reawakening of glorious German antiquity, of genuinely national institutions, is not to be expected.

The triumph of the new right, "of the new and courageous Ulpian and the deeds of the Württemberg judges"

[564] is further elaborated on p. 31: “The old German right and the old German usages”, it says, “naturally cannot be set in any comparison with Roman right; the *silliness of crude and uncultivated* minds of a dark age must form a singular contrast beside the wisdom of the greatest and most sublime jurists of *ancient Rome* and of *the whole world*, indeed become quite and utterly *ridiculous and contemptible*”, etc. Is this the spirit of German *popular character* that we see honoured and alive in such a tone? With scorn it is further adduced that the diet of the year 1515, as well as several following ones, made bitter complaints about the *learned*, who noticeably in all courts, throughout the land, *break in* with their proceedings, so that now one who needs to go to law does not get off with ten gulden, who perhaps twelve years ago would have settled the matter altogether with ten shillings, and that if no heed were taken here, one would in time have to put one or two doctors in every village to pronounce judgement. Vain complaints, for “*death* had once been sworn to *the old German usages*”. One or two doctors, it is true, did not come into every Württemberg village, but the scribes did instead; and it would be useless to inquire whether the citizens have gained by these likewise not old German usages.

These *scribes*, then, with whom it is properly a matter here, Herr Consultant Griesinger defines as juristic and cameralistic practitioners, and he places the peculiarity of the Württemberg scribes in their being such *merely unstudied practitioners*. That this, however, is the same case in other countries, namely to a certain extent, is a well-known and natural matter, since for a large part of the functions of scribedom a university education is at least something superfluous. The peculiarity of the Württemberg institution of scribedom, however, shows itself, according to this opinion and the petitions, to lie in something quite different.

[565] It emerges from them, namely, that for every official district there is a *town* or *district scribe* (for the larger towns, that is, also a special town scribe, and then for the rest of the district, which is called the office, again a special district scribe), who has the *monopoly* of having everything judicial and official in this district that is to be *reckoned* and *written, to have written*. - That the chief district offices, namely the offices of justice and police, the cameral administrations, the forestry offices, likewise had scribes as assistants is a circumstance necessary for their business in other countries too. In this regard only this can be regarded as peculiar to Württemberg, that among such assistants there are none taken from the class of studied jurists, cameralists or foresters, but that all assistants form themselves only through routine and are not destined themselves one day to hold an office in whose business they work. The forestry offices have long since been put into the possession of the nobility; the bourgeois assistant is thereby already excluded from the capacity of aspiring to such an office. With regard to studied jurists, it is not the case that it is made a condition for them, in order to be appointed to an office, to acquire the practical skill for it after completing their university studies by a practice of one or several years with an official, which preparation in other states is a legal requirement. In the *opinion* it is repeatedly said that studied jurists think themselves far too *distinguished* to enter as assistants with an official.

A petition of the town of Urach, submitted to the assembly of estates, contains the complaint that the district of the chief district office formerly seated there - an excessively large one - has been reduced; among other things the fine thought is expressed that the former many smaller chief district offices had the utility of serving the studied jurists, inexperienced in business,

[566] *for preparatory training*, - for what? for the filling of more extensive chief district offices! As if the difference did not merely concern the quantity of business; in quality it is the same. The citizens belonging to the smaller official districts would, according to that notion, be the *animae viles* on which the inexperienced appointee should train himself into an official only because they belong to a geographically smaller district. - Because now also that juristic practice which elsewhere is performed by studied jurists for their preparatory training for an office, under the supervision and guidance of an actual official, falls wholly to the scribes, the importance of the latter becomes evident, both in relation to an inexperienced superior and in itself, in that the studied superior of an office of 20,000 souls and more, who also united in himself police power and branches of administrative power together with judicial, has only scribes as assistants.

The principal part in the picture of the institution or nuisance (for the scribe nuisance appears in the reports and petitions as it were as a technical and recognised expression for the institution of scribedom) is, however, that *monopoly* which is allotted to the *town and district scribes*. Further, in order to exercise it, they keep as required 10, 20 writing hands, whom they partly keep with them at the centre, partly send out into the market towns and villages to write. A detail of the business which they have to write must be looked up in the opinion itself. Apart from the business of the apportionment of taxes, of writing tax slips, tax-receipt books, of the determination of the taxable property of each individual citizen, of noting the changes through sale of houses, estates, marriages, etc., then likewise of the apportionment of the communal expenditure of the so-called town and *district damage*⁷⁾ there are

7) *Hegel's footnote*. According to this terminology, for example, the erection of a new bridge, of a town hall, etc., would also be called a *damage*.

[567] chiefly two kinds of objects to be singled out, in which the pressure and nuisance of scribedom seems to have its principal seat. *First*, they have to draw up the acts of non-contentious jurisdiction, contracts, marriage pacts, in particular wills, inventories of what is brought into a marriage, i.e. of the property of a newly married couple, inventories of estates of the deceased and of insolvent estates, divisions of inheritances and the like. On the latter objects it says, for example, at the place cited, p. 65: In almost all divisions of inheritances there is not so much money to be found as the writing fees amount to; the best piece of property is therefore sold *publicly* in order to obtain ready money; with the newly married it goes no better: either the costs of the inventory consume their little money, saved with difficulty in the single state, or they have to run into debt already at the beginning or sell a piece of property, etc., and as the consequence of such procedures the general impoverishment of the lower class of the people is given. An unmarried couple, for example, cannot therefore itself draw up the inventory which is to be taken according to the laws there, or have it written by whomever it likes and then confirmed by the court, but only the writing monopolist can do this; and with what prolixity and cost he turns out his works generally will be spoken of immediately. - Unanimous in the petitions and other statements are the complaints both about the nature of the legal dispositions themselves, which draw after them an endless writing and unspeakable costs, and about the swindles and the nuisance which doubles and decuples what is legally permitted. - The *other* further noteworthy occupation of the scribes is the drawing up of the mayors' accounts, i.e. the communal and other accounts belonging here, then the accounts of the poor funds, of the church fabrics, of alms, hospitals and trusts, in general the accounts of the funds for the poor and the church, - besides which they also have the audit and revision of the communal and guardianship accounts. - Here, now,

[568] there comes to light the quite peculiar circumstance that those mayors and administrators of other communal property, poor funds, etc., do not themselves draw up the accounts of the administration of their treasuries or have to see to this business privately, but must have it produced from the writing factory of the district scribe. The costs are reckoned to the commune, and here the name district damage, under which they belong, is indeed quite fitting.

As regards first the side of these costs which accrue to the communes thereby, glaring examples of it are cited, e.g. that the drawing up of the account of a New Württemberg commune, the costs of which formerly amounted to 1 fl. 30 kr., has now, through the newly introduced Old Württemberg method of scribedom, risen to 50 fl.; a hamlet which formerly, for want of revenues, needed no account, nevertheless now found the art able to make one, which amounted to 56 fl. 20 kr. (Div. XVIII, p. 99 f.). These and a multitude of other examples would be amusing to read if they were not at the same time too unheard-of, too infamous swindles; just one more case: The communal account files of a place *Mögglingen* were given by the town scribe to a series of scribes one after another to be drawn up; to these together, none of whom wrote a word of the account, the commune had to pay for reading the files and studying them the sum of 900 fl., say nine hundred gulden; one passed it on this way, another that way; so much the account cost before a line of it was written, and the one who finally actually made it had, of course, rightly to be paid again for his trouble for the whole.

One of the most striking complaints among the grievances of the land compiled by the assembly of estates is made by the in part so considerable increase of the costs of administration of the property of the communes, of the poor funds, etc.; it ascribes all the evil to the abolition of the old

[569] constitution. From the statements which result concerning the institution of scribedom it is evident that these complaints were raised especially in the newly added parts of the country, and the detailed communal accounts that have been printed also show that it is precisely the introduction of this Old Württemberg nuisance which brought about an enormous increase of the costs of administration. Much more could still be cited, of the unpermitted chargings, the prolixity of the accounts (among other things, for example, in the accounts of communal poor funds and other such, which are to be drawn up *in duplo* or *triplo*, even the bills of the tradesmen are inserted again *in extenso*, and indeed also *in duplo* and *triplo*) and the like. - With this practice of sucking the citizens dry, in a rightful as well as a wrongful way, there is then connected the glaring picture which is made of the customs of this estate, of its ignorance, coarseness, clumsiness, arrogance, etc.; Div. XVIII, p. 9 ff. It says on p. 40 of the same, "that this estate was at no time held in esteem in Württemberg; in the high regard which was shown from time to time, with so much right, to individuals of it, there lay tacitly the contempt for the estate as a whole, because distinguished scribes were always a great rarity". The glaring colours, moreover, which one reads at once in the first chapter of this opinion, are not so much ground by the author as only a compilation from the writings which have appeared about that estate from other writers, older and more recent, and which give a unanimous testimony; - there are even among them some authors who themselves belonged to this estate and must have known it best. One cannot well say anything harder of a class of men than these depictions contain.

More far-reaching, however, than all this is the circumstance that to the *principal*, the town and district scribe, *the same* sum must be paid which his scribes sent out earn or extort, according to their charges, for their

[570] labours. With this, then, a peculiar kind of relationship enters. Not only has the principal the monopoly of writing in his district, but to him, who is supposed to be the supervisor over the actions of his subordinates, there must be paid, not for a labour performed on his part, but as it were as to the dynast, once more precisely the same as what his scribes earn for themselves and about whose exaggeration complaint is already made so much. This levy to the town or district scribe is independent of the seigniorial fees which are laid upon such documents besides, and falls into his private treasury. It says on this with right, p. 137 of the place cited: "That the scribes are always the *money-makers* of the town and district scribes, that these always only gain by every illegal and exaggerated charging and prolixity of their subordinates, - nothing worse than this arrangement can be devised." - The thought of a relationship of dynast or fief, according to which the town and district scribe levies dues from the citizens as it were as from subjects or *scribe-vassals*, as one could call them, appears fully developed in the case cited Div. XVIII, p. 57. A district scribe charged, in the past year, a tenant farmer who had inherited from a deceased brother, a Catholic parish priest, and had obtained dispensation from the inventory and division, the sum of 200 fl., because through the dispensation he could not come by his division fees. It is cited there further that the heir also actually paid the sum and the district scribe pocketed it without having put pen to paper, and it is further not noted that this extortion had restitution and penitentiary or other punishment as a consequence. Obligations which arise from the feudal relationship still contain, in part, a right of the feudal lord to land, in part the duty of protection of his vassals. But those fees too which the town and district scribe draws are free of such

[571] conditions. - If the Württemberg citizens are really afflicted with this scribe-bondage or scribe-serfdom - as it seems to be de facto the case and as the estates of the realm cannot well deny -, it would at least be more expedient as well as more just to turn the advantage of this subjection to the state and in its name to lease out this monopoly⁸⁾, instead of those dues, without being payment for a labour, merely falling into the purse of private persons, of whom some are thereby, as it says Div. XVIII, p. III, as well off as an Austrian and French bishop.

8) *Hegel's footnote.* On p. 64 Div. XVIII it is cited that "Duke Karl in the year 1760 used the excessive scribe earnings of the town and district scribes as a pretext to compel them to a forced loan of 50,000 fl. to the war chest". - That pretext could at least be regarded as just as good a *ground*, and this despotic act easily as just as *just*, as those feudal dues and revenues of the town and district scribes themselves.

It has been mentioned that the mayors, as also other heads of communes, administrators of poor funds and the like, do not themselves draw up the accounts of their administration, but that this business belongs to the privileged scribe. It is already important that those communal officials and administrators of foundations are kept in legitimate incapacity by such an arrangement. But of more significant weight than this circumstance, and even than the expenditure of costs considered just now, which accrues from this to the communes and the other funds, is the *dependence* in which all the heads of communes of a district are thereby placed upon the town and district scribe. On this side, which reaches further into the organism of the state, there is found, XVIII. Div., p. 97, a depiction in a petition from *Gmünd*, which presents the monster of scribedom in its various branches with official evidence⁹⁾;

9) *Hegel's footnote.* One is astonished at the detail there given at length of the sucking dry of the communes by the system of scribedom; among it are found the calculations of localities in which the costs of scribedom amount to 6 $\frac{3}{4}$ and 7 taxes.

[572] on the [branch] of which there is talk here, it says: "In communal accounts the scribe makes himself master of all the papers of the journal, the vouchers and receipts of the so-called accountant, without giving a special deposit receipt for them. From this moment the mayor is his slave; he has slept his last quiet sleep, for the thought of knowing his credit, honour and good name delivered over to a strange unknown man torments him incessantly. Many a scribe now has payments on account made to him at once and wanders off with them into another region of the Empire. If at last the business is begun by one of the successors, the accountant's period of suffering takes its beginning; he has made inadmissible expenditures, receipts are missing, a considerable deficit appears; the accountant's prospect is the fortress or the penitentiary. Now when the man conscious of his innocence is at this point of despair, then, after the appropriate means have been taken, there is a change of course again, the receipts are found again or made, etc. The accountant, together with the figures or attesting persons who appear in it, signs his account, wholly unintelligible to him throughout, and comprehends as little as he did in the case of the deficit formerly charged against him that there is now due to him in the end a credit balance."

In such hands, then, are the heads of communes, in such hands is the people! "My people, your leaders deceive you!" - when they speak of the *good* old right, one would like to exclaim with the prophet. But as far as one will be from accepting that depiction, so far as the personal is concerned, as general, just as certainly there issues not from the personalities but from such arrangements the necessary dependence of the heads of communes,

[573] of the communes and, taken together with the further sphere of business of scribedom mentioned above, also that of the individual citizens upon the town and district scribes. Those heads of communes formerly alone elected the diet deputies, and of the members of the committees the greater part was from the class of the scribes. In the Gries[inger] opinion, p. 72, it says: "The improvement or even the recasting of the institution of scribes had to find, despite its defects so often felt and censured, the greatest adversaries in the representatives of the estates, who for the most part themselves *were scribes* or at least were *under the influence of scribes*, because every main improvement stood in the most manifest contradiction with their interest." - With this everything is said. But what appears as a *were, had*, as something past, of the earlier diets and committees of the estates of the realm, was it not also a relationship, like the history of this assembly of estates itself? has it done anything effective to sweep away such an Augean stable? would it not have raged in its own entrails? Have the ever repeated efforts of Herr von Forstner, who let himself not be wearied by its delays, been able to bring it about that after a year and a day even merely a report of the committee has come about, much less that a deliberation or even a resolution would have entered into the matter?¹⁰⁾

10) *Hegel's footnote.* What was still done in Nov. 1816 will be mentioned below.

It is characteristic that the complaints and grievances came almost only from New Württemberg, as if Old Württemberg had been so entangled, actively and passively, in such a condition that it had had no consciousness and feeling, or rather only that of resigned despair on the one side and on the other only a privileged conscience wholly secured in the good, old, guaranteed rights! - It may have contributed its share

[574] that the Old Württemberg scribes, whom one had to use preferably, as men experienced in the field, in the new territory, kept house there worse than at home, as in a conquered land. But the new countrymen, who had grown up and been cultivated in the habit of Old Württemberg right and of this so much praised constitution, recommended themselves badly thereby, and just as badly did they recommend this old right and this old constitution.

The ministry, however, might be reproached for having summoned an assembly of estates whose elements it must have known, and for not having advised the king rather, in addition to the changes which he had undertaken in the upper storeys of the state, to add to them beforehand this, that he should effect the regeneration of the unhappy constitutional condition of the general mass of the people. So long as this civil aristocracy peculiar to Württemberg existed, which by writing drew episcopal revenues as *dues* and exercised a general power over the communes, their heads and private persons, so long as these heads and the communes were not torn out of the clutches of this privileged caste, so long as this element of ethical and intellectual stagnation, ensnaring the concepts as well as the purse of the mass of the people, was not destroyed, no true concept of right, freedom and constitution could take root, the ministry could expect nothing other than that of the elected deputies a great part would emerge from this element.

It could seem brilliant that the king was the first among the German princes to give his people estates of the realm according to an organisation which was to make them representatives of the rights not of a class but of the people itself, which thereby

[575] could tear the estates constitution out of the indifference and estrangement, indeed contempt, of the people towards it, to which earlier German estates of the realm had sunk.¹¹⁾ Old Württemberg has had no significant nobility on its side; instead, that more unassuming but more oppressive aristocracy had established itself. So long, however, as these fetters of the people were not broken, no representation belonging to it could emerge of itself; and as indispensable as it is for the concept of a monarchical state that *estates of the realm* be in it, it would itself be preferable *to have none at all* than to tolerate the continuance of those privileges, of that oppression, deception and stupefaction of the people, and in any case better than to have estates of the realm which are the representatives of the privileges of this aristocracy. – The ministry could likewise know the principles of the other aristocracy, which had only just been incorporated into Württemberg or, according to the sense of a part of it, was only yet to be incorporated. It had to

11) Hegel's footnote. Spittler in der *Sammlung einiger Urkunden und Aktenstücke zur neuesten württembergischen Geschichte*, Göttingen im Jahre 1796, says in the *Entwurf einer Geschichte des engeren landschaftlichen Ausschusses*, II. Teil S. 359 f.: "In many a land its well-arranged collegial constitution has become a far better bulwark of the general welfare than even the estates constitution. Hence there often rests on this or that sovereign college a general reverence of the whole public, while the *permanent corps* sinks into a *disregard* which, given its original vocation, should be almost impossible and yet breaks out *everywhere* unmistakably" – Much else from that essay, which would also find application to the more recent relationships, could be recalled; only this further: on p. 444 it says, with regard to the arrangement of the *control* over the *administration* of the *land treasury* by the *narrower committee*, that a worse control would not easily be found, but that, *a few human failings excepted*, management had on the whole been in conformity with the compacts. – At that time the management of the land treasury cited above had not yet been brought to light. – Equally remarkable is what occurs on pp. 445 f. on how the principals, the town magistrates, departed ever more from the knowledge and understanding of the rights, so that their clumsiness could assert no rights and their ignorance no authority any more – against the committee gentlemen, – as it could not go otherwise, since the general affairs were no longer conducted in the manner of the people but in the manner of advocates and, besides, *in secret*; further how at diets the relationship between the committees and the remaining diet deputies took shape, the committee gentlemen reporting and the votes of the rest "being heard, as it were, only to pass the time".

[576] foresee that this class would begin by reserving *its rights* to itself - rights which in this indeterminacy left undecided what relationship this estate had in the state, and which in their old extent contradict every organism of the state. - It has shown itself in most cases of great political movement that prince and people have been of *one* mind and will, but that only too often a middle estate, as in France the nobility and the clergy, so in Württemberg the former and the civil aristocracy of scribedom, instead of constituting the bond of the two, as is its vocation, stiffened itself upon privileges and monopolies and hindered, indeed brought to nothing, the actualization of the principles of rational right and the general welfare. Through the position which belongs to the middle estate in general, of constituting the intelligence of a people and of directly handling its rights as well as its duties, it is able, when it rather defends its own privileges against it, to draw the people into the delusion of placing itself on the side of this its enemy. Then arises the spectacle, as disgusting as it is sad, that *wrong*, which has been called *right* for a hundred years, has passed as such and has brought the people to despair, is supported by the people itself, deceived by this name.

Now that the principles, the spirit and the interests of this assembly have sufficiently made themselves known from what has gone before, the further history, which is only a dry consequence of it, has less interest any more and can be summarised more briefly.

In pursuing the historical account we stopped at the point that on 26 June the estates did not go into giving to what in the important royal concessions was acceptable to them, with which the points likewise acceptable from the royal constitution could be brought into connection, the form of an agreement, but rather maintained

[577] themselves in the position of complete *non-satisfaction*. Original in this, but wholly in the style of the course so far (IX. Div., p. 3), is that in the following session, *after* the resolution had been taken, the *examination* of the royal resolutions was now brought up in a paper of a single member, Dr. *Weishaar*, and a committee appointed to examine this paper. This committee reported on 28 June, yet made no mention at all of an investigation and of the finding on this paper, but only moved that it be communicated to the royal commissaries of negotiation. This resolution of 28 June also appears in the main address, although this is dated 26 June, just as on the 28th the decision taken on the 26th to mention in it the high *guarantors* of the Old Württemberg constitution, namely the three powers Prussia, England and Denmark, is withdrawn. - On 21 July followed the royal resolution that was to be foreseen (XX. Div., p. 13), the *adjournment of the assembly* from 26 July, with the motive that the *grievances of the land* laid before him must be of far greater importance to the king than the present disputations over *constitutional matters*, and that he was minded to subject those to a strict examination and investigation by the ministers and authorities, - that, since the estates of the realm in their submitted papers had exhausted everything which they could conceivably be in a position to bring to the king, there was no matter before them suited to a deliberation with the assembly. Further, the king directs it to leave plenipotentiaries behind for the continuation of the negotiation and so to instruct them that an agreement could be looked forward to. - One will have to admit that this resolution, with regard to the two matters before it, was in keeping with the state of the matter.

The estates, on the contrary, testified in their address of 24 July (Div. X, p. 15) that they were not so

[578] much concerned about the grievances as about the constitution, that they had been plunged into the *greatest affliction* by the royal resolution, since they were to be prorogued before they could bring the people *any* comfort, *any* reassurance. Besides this disavowal, that the king had conceded so much that they themselves held to be essential, but in fact as good as everything essential, they added the notification that they [had] empowered a committee of 25 members under the presidency of the hitherto president of the assembly, which was to conduct the negotiations for a settlement and *in general* to attend to the *interest of the country*. Moreover, they could give no other instruction than that which they had received from the people and bore in their hearts; they further *reserved* to themselves *the approval* of the negotiations. - There was thereby under way, namely on the part of the estates, a committee of the old style, a committee empowered to attend to *the interest of the country in general*. The king preserved his people from this and saved the estates of the realm against their will and against themselves. A resolution of 26 July (Div. X, p. 50) rejected the ridiculousness of the estates' motion by observing that it was *not compatible with the concept of prorogation* that a body *representing the whole assembly* should remain behind. - But with the notions of these estates, as has been seen sufficiently, much was compatible that is not compatible with *the concept*. - They were further to leave behind plenipotentiaries in the former number of their negotiating commissioners. - In the same sitting, on 26 July, in which this royal resolution was read out, Herr Bolley developed in a *votum scriptum* that the assembly could in *no respect* leave behind only four plenipotentiaries. Then the dispatch of a deputation to the king, which was to repeat the previous petitions *orally*, came up as a proposal; but it was rejected, because such a deputation, no more than the previous written submissions, would accomplish anything, because it would further be contrary to the old norms,

[579] - because a ruler has so many *means at hand* to turn away those [who] appear before him with apparent *humiliation*, so that this act could be attended with *unpleasantness* for the assembly. - Was it perhaps afraid that its deputation might be cudgelled out of doors? - While the committee was occupied with drawing up the address, the rest of the assembly, in this distress, had addresses read out to it, in part from far distant towns and their districts, which were dated from the previous day, presented “per Estafette” on the 26th, and composed in the sense of the assembly. Of other addresses, of other content, which had not yet come to be read out, only the long list was laid before it, without stating the date of their composition and presentation. Among other papers there was also read out one “*desired by several members*”, on the *allowances* - refused them by the district treasurers. - In an earlier sitting, namely, it had been noted that the members refused to accept their allowances from the state treasury and demanded them from the municipal treasuries, whose administrators, as it seems, were not all compliant in making this unauthorised payment.

The address now resolved upon by the assembly adheres to its previous demand and concludes, with much pathos, with the customary broad self-praise and self-testimony of its conscience, and that it had done nothing but its duty, that it had received from the people *the most touching proofs* of gratitude for it, and from all Germany proofs of esteem, and so on. - The king had convoked them, had given the constitution, whose basic features were considered above, had agreed to the recent concessions and, in spite of the assembly's scornful replies to them, had allowed the continuation of the negotiation that had been set up and begun; the assembly's being together was itself without any object; it remained reserved to it both to instruct its plenipotentiaries

[580] and to ratify what was negotiated. In spite of all this, the authors of the address and the assembly, unanimous with them, were not ashamed to tell the king that, if he would not consent to the transfer of the rights of the estates of the realm to a committee, they must have the conviction that his *intention* was that *no constitution whatever should fall to the people*. - The assembly still resorted to the last means in this distress, where everything seemed to it to stand on the brink, - namely to turn *to the guarantors*. - Herr Bolley expressed himself on it (Div. X, p. 37) in such a way that, if the king did not comply with the wishes of the address, not only would every possibility fall away of turning to the Federal Diet as an assembly of estates, but *also not much more would be left to lose for the cause itself*. - One may find it wonderful enough how the assembly could work itself up into such fever and sultriness; its exaggeration, where a quite simple matter was at issue, could have no purpose but to make credible the worst intentions on the part of the king, the danger of the *loss of the cause*; and this cause was the reduction of the estates to an old committee.

As for the invocation of the *guarantors* of the *old* constitution, all that was lacking was that the estates should also have sent letters to a Diet of the Empire at Regensburg and an Aulic Council in Vienna. They invoked the guarantee of powers which had only just now in Vienna, in common with the rest, consolidated anew the dissolution of the German Empire and the elevation of the duchy of Württemberg to a state, which had reasonably stipulated for the new German states constitutions with estates of the realm *in general*, *not* the *old* ones - and thereby laid into this article the only conceivable guarantee for a new German state, if such should be necessary -, indeed which had not even imposed on the French nation, whose king they had just for the second time led back

[581] to his throne, the disgrace of a guarantee of its Charter, much less that this people had called upon them for this last humiliation of itself. - The Württemberg estates, too, have, as goes without saying, never received an answer to their letters to those three powers.

The king, in a decree of 27 July, had the estates made aware of the inexplicability of their conduct, and left it to them, if it served their reassurance, to appoint a double or triple number of deputies; he postponed the term of the prorogation to the 28th, in order to leave the assembly time once more for reflection. On the 28th it produced yet another broad address like the preceding ones, in a tone of contentious spite and evil embitterment which contrasts greatly with the tone of dignified bearing, calm simplicity and restriction to the essential in the royal resolutions; - the expression at the close of the address, that through this prorogation an *incurable rift* between *the king and the country* had been brought on, an assembly of estates should never have permitted itself. - It now dispersed.

This evil bitterness, can it have had a share in the *touching proofs* of gratitude of the *people* (among others, in one of the last sittings, in a *serenade*)? One might have thought that only the rabble could have taken pleasure in it and have found its self-esteem in it. It had no power over the king to keep him from convoking the estates again; rather he refuted their conduct, which was to hold not to the matter and his declared will but chiefly to their own imputations of *intentions*, by convoking them again for 16 October of the same year. If the ministry, even before the first convocation, had been able to find it most *improbable* that nothing salutary would be accomplished with such material as, for an assembly of estates,

[582] was to be found, it could, after the experience so far, hold itself convinced of the *impossibility* and justified before the whole world if it did not convoke them again. Such a sitting together is nevertheless always of infinite importance for the *political education* which a people and its heads require, a people that [had] hitherto lived in political nullity and whose education was not, as with a still unprejudiced people, simply to begin from the very beginning, but which was also ensnared in the hard fetters of an oppressive aristocracy, of an internal constitution built upon it, and in the lack and perversity of concepts about the rights of the state and of freedom, or rather in words. Against such concepts, which, as has been seen, were so closely bound up with the firmly and securely established interest of the ruling caste, no direct struggle can be entered into with concepts, nor any direct effect be expected from it; all the more certain, though unobtrusive, is the indirect effect, that such a mind is given room to wear itself out against itself and to bring itself to light. The nearest effect on the public is that, as such a distorted content develops further, it soon no longer understands anything of it and of its defence. One consequence, the uncovering of the rights of the institution of scribes, and with it a more correct and more widespread consciousness of where a *permanent* source of oppression lies - characters and actions of rulers, as well as circumstances, are by contrast only something *transitory* -, has been considered, and an effect at least of *formal* culture will show itself in future. Since, given those presuppositions, it could not have succeeded and had not succeeded to introduce the constitution a priori, there remained only this, to set the estates on the path of their education by themselves - a path to which human beings indeed also have a right; it does honour to the prince and his ministry to have opened it in the confidence that it,

[583] although it proceeded from the opposite standpoint, necessarily brings one unconsciously nearer to the rational.

In the royal decree of 16 October 1815 (Div. XI, p. 26), with which the new sitting was opened, the standpoint of the negotiations is now determined in the following clear manner: that the estates hold that the principle of the *legal claim* of Old and New Württemberg to the *old constitution must first* be established; the king would thereby have to declare himself bound to transfer to New Württemberg even that which he held to be *faulty* in Old Württemberg; to this he could, according to his best-grounded conviction, not be bound. Even if he were convinced that the claim of Old Württemberg to its former condition of right was still binding for him, *which was not the case*, he could readily agree to its restoration if it concerned the old land alone; nor was he minded not to take into account the former relations of right of the newly acquired parts of the country. But there could be no question of arranging the so different parts of the kingdom each according to its peculiar norms, but of bringing about, by common agreement, a constitution equally appropriate to old and new relations. - It was further in this opening no longer a question of the royal constitution; rather, alterations which the king reserved to himself as required for the welfare of the state are called only *individual* provisions and are to be made valid by way of negotiation. He further declared that he would retain from the old constitution whatever could ever be reconciled with the present time and a good administration of the state. The recognition of the old principle of right in its whole extent was in itself useless and contrary to the nature of the matter, but what is true was exhausted by the recognition that everything usable

[584] from the old constitution should be retained.

As regards, before we go further, the composition of the estates as it appears at their reopening, most of the holders of individual votes had also joined and presented themselves, partly in person - among them six princes -, partly with the transfer of their votes to those present. Twelve of the nobility had already in an address of 3 May (Div. IV, p. 141 ff.) put before the assembly that to which they limit their expectations and wishes with regard to the privileges that were to remain to them from their former ones in the new organism of the state. These demands, moderate in their content and, what is likewise important, stated in detail and precisely, are also composed in an open, frank, yet fitting tone. Consultant Griesinger did indeed read out on 6 June (Div. VI, p. 113) a report commissioned of him on that address, but because this matter would have been a *content*, the assembly came to no deliberation upon it, still less to a resolution. - To that address the rest of the nobility of the kingdom had attached itself on 26 June (Div. X, p. 24). Likewise on the same day (Div. X, p. 26) another part of the mediatised lords, who (Div. I, p. 15) were awaiting the results of the Congress of Vienna on their relations under the public law of the state and consequently did not wish to take part in the negotiations of the estates, having now, after the conclusion of that Congress, like the Prince of Öttingen-Wallerstein, declared that they would take part in them, - with reference to the rights assigned to them by the Federal Act, namely to be *the first mediatised lords* in the states in which their possessions lie, or to the rights and powers that may yet accrue to them in future. - Several mediatised lords, however, had again not appeared this time. Also several newly elected members appear in place of former ones, who had laid down their positions as

[585] deputies. It seems that this laying down of positions, as well as the election of new deputies, met with no objection and that the ministry let it happen, without anything having been determined about it in the royal constitutional charter. There was in any case still lacking, too, a requirement essential to every assembly, a *set of rules of procedure*; thus one sees the assembly, in this new first sitting, in which such princely splendour entered it, make use, for its show of respect, of the same gesture which, as cited above, had signified in the very first the voting on its resolution. – Much indeterminacy as there still lay in the relation of the mediatised lords to the state and to an assembly of estates, it could suffice that they now recognised themselves as mediatised lords of the *kingdom*, – for an assembly which itself found and held itself still wholly in the same indeterminacy. Had it been possible for it to enter into matters of the constitution with respect to a content, that insufficiency would soon have had to come to light.

In the resolution of 16 October the king had further called upon the estates so to instruct their already existing plenipotentiaries for negotiations that *a settlement valid for the whole* could be concluded. The estates replied with an address twelve sheets strong in small print (Div. XI, pp. 263–286), for whose thorough elaboration the assembly gave its thanks to Herr Bolley. It repeats the old views in the usual manner; there is no need to extract anything from it, only this, that on p. 269 it says: even a *superficial* acquaintance with the Württemberg constitution yields the conviction that it constituted a *self-subsisting, closed* whole; – one can grant this sentence in one sense, but even that hardly, for to such a conviction, or rather judgement, even a merely superficial acquaintance is already far too much. – It is said further, among other things, therein that the estates cannot *concede*

[586] that *the people be robbed of its history*, that all earlier fundamental laws be made *antiquities*; - one could rather ask whether a people has really had a history which was not an independent state but only a part of a people, whether a people in fact does not first acquire a history when it becomes a state. - That in this address the estates declare themselves unable to state the rights of the Württemberg subjects because *the old archive of the estates was still withheld from them* has been cited above, - as if the constitution as such were concerned with a code of criminal and civil law, and so on, and as if the royal constitutional charter had allowed nothing more of these rights to hold! - The simple and monotonous closing petition is that the king should *solemnly recognise the Old Württemberg constitution as a rule valid for the whole kingdom*, solely with the reservation of such modifications as are, by mutual acknowledgement, necessary or expedient.

The estates had at first conceded *only such* modifications of the Old Württemberg constitution as related to the incorporation of the nobility and the community of rights of Protestants and Catholics; according to their address the “final recess” now to be drawn up was only to be *added* to the chaos of the old laws of the land which were recounted above. If it was to concern *only those two* objects, it would still have been the same untenable notion, or rather the wholly empty delusion, of wishing for the rest to let the old constitution - the Old Württemberg one at that - come into force, with neglect and suppression of all claims of the New Württemberg parts of the territory to their peculiar rights - under the wholly altered position of the kingdom towards the duchy. But as that agreement to be reached was to contain *more* - and the nature of the matter would have brought this about of itself, the petition of the address also speaks of it in more general terms -, so the

[587] opposition between the royal intention and the demand of the estates determines itself as the question whether the *royal constitution*, with the concession that agreement was to be reached about *modifications* of it, or the *Old Württemberg one with the same concession* should be taken as the basis. If in diplomatic negotiations it occurred that the one party demanded that its proposition be taken as the basis with the concession of further modifications to be agreed upon, and the other party demanded the same, then, *since the matter* is wholly the same, according to the proverb the cleverest would give way.

In the royal rescript of 13 November, which finally brought about a decision, not indeed on the matter, but yet on the course of the estates' libelling so far, the essential legal assertions of the estates, especially that of incorporation, were entered into, and their shallowness was shown in a separate enclosure, the main standpoint repeated, that it was a matter of a constitution of the state by which the new and old lands are united into *one whole under the public law of the state*. The king declares that, with the constitution of the German Empire abolished, where in an uncertainty of right there were also no judges any more, he could not enter into a merely general recognition of the old treaties of the land *without a statement going into particulars* of their content. First, a complete and clear development of this content, scattered in many documents and often doubtful, would be indispensable, so that the constitutional provisions should no longer [be] the *exclusive property of a few* (of the old *committee gentlemen*, perhaps not even of all of these and chiefly only of their *consultants*), but could rather become the *common property of the people*. - In the unhappy case that a settlement on a *common* constitution should not come about and the estates should still further refuse to enter into negotiations for one, the king would be resolved to introduce in

[588] his ancestral land the *traditional representation*, in his new lands by contrast a constitution founded on a *true national representation*, with regard to their earlier relations of right. The king further had communicated to the estates (in a second enclosure) *fundamental points* which can seem unsuited to no *unprejudiced person* (certainly!) to serve as the basis of the negotiations on a *good* constitution.

The reason of the matter nevertheless prevailed so far that the assembly resolved, admittedly to something merely formal, upon negotiations. - The Prince of Öttingen-Wallerstein moved (Div. XIII, p. 138) that after a sufficient interval the members should present their views on the royal rescript and that a committee should then give its opinion on them. This proposal disturbed the usual way, of entrusting the report on a royal proposition at once to a committee, and probably to the ordinary members, and of seeing the *unanimity* of the assembly's resolution, in which such a committee had acquired a kind of monopoly, follow of itself. It was nevertheless thought fit to elect not a committee but *four rapporteurs*. For some time it had moreover already happened that even of a committee elected to report and give an opinion each individual member brought his essay into the assembly and read it out; it seemed as if even a committee of a few did not arrive at a deliberation and resolution among themselves, but only at a sequence of monopolies. - In the following sittings many essays were now read out, several of which went to the effect that even so one could not yet enter into negotiations; e.g. that it was a matter *de iuribus singulorum*, on which the *majority of votes* of the assembly could not decide, - a sacred principle of the former public law of the German Empire, in which the *basic evil* and the *basic injustice* had precisely consisted

[589] in that out of the rights of the state *iura singulorum* had come to be.

Among other voices of the better mind, Herr *von Varnbüler* (Div. XV, p. 59) replied to Herr Lang, who had made the admonition to take heed of *conscience* and had called out “with pathos”: “No negotiation”, – that he (Herr v. V.) on the contrary had to hold conscience *endangered* by such a proposal, in that in the end it could much sooner come to receiving no constitution at all. “By the old constitution’s continuing *in right*,” he continues, “the *people is not helped*, and with *learned* treatises we cannot answer it if it should one day call out to us: ‘You have played a *presumptuous game*; you have staked *everything* on *nothing*; we were to have been given:

Participation in legislation,
the right to grant taxes,
the old church property,
accounting for the state expenditure,
personal freedom,
responsibility of the servants of the state,
the right of emigration,
the continued activity of the estates,

but *you have rejected everything!* Who is to blame that we have lost everything?” – It is remarkable that several gentlemen of the nobility here distinguished themselves above other deputies by more moderate and more unprejudiced views. – Herr Bolley believed (Div. XV, p. 6) that he had to defend himself against the disapproval which had not escaped him already during his delivery; he thought he had not deserved the reproach of bitterness and mockery, and that probably only his *strong voice*, with which he had delivered the speech, had caused *some offence*.¹²⁾ – It seems the assembly was weary of the

¹²⁾ *Editors:* In Div. XVI, p. 161, the Prince of Waldburg-Zeil remarks that “most submissions are read out so *quickly* and so *quietly*” (in this sitting only Herr Bolley had read out submissions in the name of a committee on the draft of an address, and in the preceding one this draft itself), “that, if one is not *exactly instructed*” (like the committee), “one cannot grasp the whole content”. That circumstance, which has already been discussed above, readily associates itself with the reading out of essays, but is not conducive to an assembly’s own insight into the matter, which for that reason sees itself the more easily induced to rely on its committees and to go along *unanimously* with their opinions.

[590] addresses of the previous style and breadth, and a plain draft of Dr. *Weishaar* for an address, composed without bitterness, self-righteousness and calumny of the royal intentions, was accepted by the assembly by 57 votes against 49 in the sitting of 23 November. In it it is acknowledged, with expression of reassurance and thanks, that the obstacles to an agreement have been removed, and the appointment of the plenipotentiaries of the estates for negotiations toward a settlement is announced. - Herr Bolley, *after* this resolution had been taken, endeavoured in the following sitting, while the ballot papers for the election of the negotiating commissioners were still being handed in, by presenting his *scruples* to secure the insertion of some *reservations* into the address, through whose *all too great diplomatic subtlety* the estates had not remained true to their *previous character*; - in fact the plainness, openness and simplicity of it stood out sharply against the opposite character of the previous ones. - The assembly nevertheless stayed with its resolution.

In the instruction of the estates' commissioners it was to be included as the purpose that a merely *accessory recess* should come about; this was rejected, but instead Herr Bolley nevertheless carried through the fine additional article (Div. XVI, p. 47) that the estates' commissioners should seize a *suitable opportunity* to declare themselves definitely on the chief purpose of the treaty in the sense of the *earlier submissions*; - in these, as cited above, a settlement was restricted to such a recess. The

[591] negotiations, however, embraced the whole extent of the matters of the constitution. - The commissioners of both sides held on 4 December 1815 the *first conference*. Later (on 17 January 1816) an instructing committee of 12 members, and further on (on 29 February) one of 25, was set beside the estates' commissioners. The chief part of the labours both of these members and of others who saw fit to join in consisted in collecting *materials* on chapters of the old constitution according to a plan taken as basis and then in redacting the individual objects into an ordered connection of propositions, on whose content and wording the committee agreed and with which the estates' commissioners entered into negotiations with the royal ones. Since the estates had once displayed their aversion or incapacity to grasp anything universal and to proceed from such, the *fundamental articles* appended to the royal rescript of 13 November had also been wholly set aside and ignored by the assembly. Since one now proceeded from the assembling of the particular, there arose of itself the need to reduce these materials to universal propositions, on which the Prince of Öttingen-Wallerstein (Div. XVII, p. 58 and *ibid.* p. 145) made the motion. This ascent to the universal belongs to the formal side of the *political education* of a new assembly of estates.

The fruits of this redaction have appeared in print separately as *Draft of the Württemberg Constitutional Treaty to be Renewed. After Resolutions of the Estates' Instructing Committee 1816*. - This work has a different look from a collection of recesses of diets, sundry ordinances, and so on, just as it also departs from the old constitution in essentials as to *content*. Such an ordered compilation of determinate propositions makes the earlier fundamental laws, by the deed, into *antiquities*. The *general clause* appended to the draft, which earlier

[592] had already lain close to the heart of the assembly of estates, that all fundamental laws of the land and of the ruling house of the former duchy, insofar as they have not been changed by that draft, retain their continuing binding force, must always partly be conceded, as something innocent, to the reassurance of the formal conscience; partly a constitution is in general indeed something firm, but nothing absolutely at rest, and it is above all the sitting together of an assembly of estates whose labours are a constant, calm further formation of it. - This is the true *general clause* which the world spirit appends on its own account to every existing constitution. - The activity of an assembly of estates, insofar as they have a *matter* and *content* - otherwise they are in any case no labours -, or already the present working on a draft constitution, makes the *formal principle of right* without *further content*, which for this assembly was for months its highest goal, vanish of itself from the heads. A coherent labour on a whole of a constitution in determinate propositions makes it, moreover, in itself impossible merely to keep to positive provisions, given the confusedness, scatteredness and altogether the multitude of those countless documents and rescripts cited, and leads to using one's own understanding and reason, as in the so-called *natural public law*. - Effects which result unconsciously, through the nature of the matter, in the heads, of themselves, against their stiffest and most decidedly expressed notions, are always the most important result, on account of whose certainty clear-sighted ministries, as the Württemberg one also did, look past the preceding phenomena of passionateness, prejudices, perverted concepts, spite, and so on.

As regards, however, the business of the assembly of estates itself from December 1815 to the same month of 1816, it related partly to matters other than those of the constitution,

[593] partly to these. To the former belonged, among others, in part particular complications concerning the mediatised lords; it was already touched on earlier that it is hard to see how a German assembly of estates is still to come into operation if these relations are not determined beforehand. If such an assembly itself, as it appeared here at first, is to be used as a means of first asserting the claims of this estate, then the estates show precisely thereby that they are not yet organised. - Among the remaining affairs, to be passed over here also on account of their slight interest - the institution of the scribe nuisance has been considered above - the royal proclamation and collection of the annual taxes in particular caused great stir. The king had also begun on 20 October 1815 to have communicated to the estates various elucidations and corrections, contained in the reports of the ministries, of what they had presented in their *essay on grievances*, together with some altering provisions occasioned thereby. In the elucidations the shallowness of many views presented in the said essay was shown. The assembly afterwards appointed a committee on these matters, but later dissolved it, like most of its committees, without the matters being further dealt with. The whole of the members not included in the negotiating committee were on 29 February united into a large committee of several sections, which were to distribute among themselves the grievances and general matters and to work on them especially. - Of the labours of these sections, however, nothing at all has come to light. Had it come, through their labours, to an effective negotiation with the ministry, there would have happened what had earlier been rejected, namely an *entering into the grievances*.

In current matters, such as the proclamation and collection of the annual taxes and others, the onset which the assembly felt

[594] itself driven from time to time to take ran into straits against its position. It could neither, as an Old Württemberg assembly of estates, exercise rights of co-operation - for it was not one -, nor rights which would have been conceded to it by the royal Charter - for this it did not want -, nor just as little according to the new settlement, for this had not yet come about. Hence later still, on account of this embarrassment whether the assembly was competent for this, was *constituted or not constituted*, discussions occur in June 1816 (Div. XXV). The royal ministry rejected the attempts of the estates to assert themselves as constituted by pointing to the nature of their relation at that time.

The business concerning the constitutional settlement, however, the assembly had transferred to its commissioners and committees. At first (from 1 December 1815) it held the sittings in which it was reported to on such matters *secret* and kept separate minutes of them. But after the detail of the negotiations had been transferred to the committee, it (on 25 January 1816) again abolished this secrecy. - Earlier already, on the 15th of the same month (Div. XVII, p. 144), the commissioners had made the motion that the *individual* sections of the constitutional work should not be brought *before the assembly*, but that the whole should first be completely worked out. Herr Knapp submitted in the committee (13 February 1816, Div. XIX, p. 75), among other things, that with the manner of negotiation ordered, apart from its not befitting, as a *diplomatic* one, the relation between the king and [the] estates, only five members [regularly] and seven (the committee then consisted of twelve) only at times were *active* and *effective*, *all others* however being almost merely occupied with *insignificant matters*. On the question how *during the negotiations* the assembly in general and in relation to the constitution was to *exercise its vocation*, the resolution was now passed (on 29 February 1816, Div. XX, p. 28) that not one chapter after the other,

[595] but one day the whole draft constitution should be brought to the deliberation of the estates, and that in the meantime they should be reported to by the committee on the course of the negotiations *in general from time to time*. Afterwards there also occurred the union, mentioned before, of the rest of the assembly into a committee of several sections.

Thus the assembly found itself, of itself, in the relation that the king had wished to bring about by its prorogation at the end of July 1815, which had so greatly excited its passion and with which it believed it had *not much more to lose in the matter*. The superfluity of its being together for a whole year without real effectiveness, neither for the constitution nor for other objects, the consideration of the *increase of costs* had, it seems, not been able to remove. Herr Knapp said in a speech of 9 February 1816 (Div. XIX, p. 23) that one heard *already now*, and not unjustly, the question: “Why an assembly of more than a hundred men, why a daily expenditure of more than a hundred ducats, if only a few have to conduct the business or [the rest] have to occupy themselves only with less important matters which could likewise have been conducted by a few?” - The assembly has remained indebted for the answer.

Of the draft constitution there were now read to the assembly over the year, from time to time, partly on commission of the committees, individual chapters, partly also other essays and so-called materials for such a draft. Then the *Allgemeine Zeitung* and other “unknown” *writers* too could be taken to share in the business and the entertainment of the assembly. The right of frank judgement and other voices than the previous eulogies of newspapers and journals seemed to it something so foreign that deliberations were held against newspaper articles and pamphlets just as against royal rescripts, committees appointed, and extensive labours and essays, which became books,

[596] were read out before the assembly, which listened to them in order to justify itself through them and to *refute*, as it was likewise called, at times in a droll manner, the “calumnies and slanders hatched against it”, as it was called.

In the sitting of 17 September 1816 (Div. XXX, 1st part, p. 32) it was announced that *the instructing committee* had *finished its labours* relating to the constitution, which were now to be laid before the assembly little by little. Some of them were still read out. But even in this last quarter of a year the assembly did not come to a deliberation, still less to resolutions on them. - Shortly before the death of King Frederick II, which took place in the night of 29 to 30 October 1816, there had once more, on 24 October (Div. XXXII, p. 48), been heard in the assembly indignation against the *scribbling nuisance*. The announcement of a crying case seemed to tear it out of its hitherto lethargy about it. The committee appointed for it was strengthened, and since Herr *Knapp*, “on account of constitutional business piled up for eight months”, had not been able to complete the report entrusted to him and the assembly had not come to any deliberation, an address was now (21 November, Div. XXXIII, pp. 99 f.) submitted to the new ruler, asking him to appoint a commission of the sovereign and the territorial estates, to which the work should now be entrusted which had hitherto been expected of the estates. For the joint work with royal deputies it is alleged: because these bring with them great *experience*, which only the *highest authorities* can have, - an admission which might well also have been present in the drawing up of an essay on grievances, the organisation of estates of the realm and other cases. - But because “every *month of delay sensibly damages* the country” (why had the assembly hesitated so many months with a work on its side? its first committee it had

[597] appointed on 13 May 1815, thus *eighteen* months before), it laid before the king only a *committee opinion* on provisional means, which it moreover had not made its own, and on this too it had not now, on its side, brought about any proposals for remedy. After the king on 6 December (Div. XXXIII, p. 150) had given the estates to understand that he had entrusted to the Privy Council the examination of the draft of a constitutional charter and of the counter-draft that had resulted from it, and had prorogued them until 15 January 1817, the assembly dispersed.

After this so lengthy exposition - whose object one would misjudge if one wished to ascribe to it the purpose of a defence of anything other than the *concept of the estates of the realm*, bound up with the highest interest, against the *actuality*, so unsuited to it and yet so presumptuous, which has depicted itself to the public through the printing of its *proceedings* and set itself up for judgement - there remains only to cite the remarkable final result, the fate of this assembly namely, through the whole course of its long and costly sitting together, not to have brought about an agreement with the king in any case, but neither, within itself, a resolution on any content of any object of the constitution.